



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1999

Mr. Michael Goldman
Goldman Associates
4 South Market Street
Fourth Floor
Boston, Massachusetts 02109

RE: MUR 4803
Michael Goldman d/b/a
Goldman Associates

Dear Mr. Goldman:

On October 7, 1999, the Federal Election Commission found that there is reason to believe you, doing business as Goldman Associates, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Lawrence L. Calvert Jr., the attorney assigned to this matter, at 1-800-424-9530.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Michael Goldman d/b/a Goldman Associates

MUR: 4803

I. GENERATION OF MATTER

As it pertains to this respondent, this matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

No person other than a qualified multicandidate political committee may make contributions to a candidate or candidate's committee in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

The extension of credit by any person to a candidate's authorized political committee is also a contribution, unless the credit is extended in the ordinary course of the person's business. 11 C.F.R. § 100.7(a)(4). The terms of any credit extended must be substantially similar to extensions of credit to the creditor's nonpolitical debtors that are of similar size and risk of obligation. 11 C.F.R. § 116.3(a). In determining whether credit was extended by a commercial

vendor in the ordinary course of the vendor's business, the Commission will examine the vendor's established procedures and past practice in approving credit, the usual and normal practice in the vendor's industry, and whether the vendor received prompt payments in the past from the candidate or the candidate's authorized committee. *See* 11 C.F.R. § 116.3(c).

In addition, a commercial vendor must pursue collection of an outstanding debt from a political committee in a commercially reasonable manner; otherwise, a contribution will result. 11 C.F.R. § 100.7(a)(4). To settle or forgive a debt owed by an ongoing committee without making a contribution, the vendor must file with the Commission its intention to settle or forgive the debt. 11 C.F.R. § 116.8. The Commission will determine if forgiveness or settlement of a debt owed to a commercial vendor is "commercially reasonable" based on factors such as whether the debtor committee has made reasonable efforts to raise the funds to pay back the debt, 11 C.F.R. § 116.4(d)(2), and whether the vendor has made similar efforts to collect the debt as it would a nonpolitical debt, such as by withholding additional goods or services until payment on the debt is made, referring the debt to a debt collection agency, or commencing litigation. *See* 11 C.F.R. § 116.4(d)(3).

2. Relevant Facts

On August 18, 1993, John F. Tierney of Salem, Massachusetts, filed Form 2 with the Commission, declaring himself a candidate for the Democratic nomination for U.S. Representative from the Sixth Congressional District of Massachusetts in the 1994 primary election. The same day, a committee that came to be known as The John Tierney for Congress Committee (FEC ID #C00283283, hereinafter referred to as the "first committee"), filed a Statement of Organization with the Commission.

The first committee's 1993 Year-End Report of receipts and disbursements indicated that by the end of 1993, the first committee had incurred an \$8,500 debt to Goldman Associates of Boston, Massachusetts for "communications consulting." According to the Dun & Bradstreet ("D&B") business information database, Goldman Associates is engaged in the business of "communications consult[ing] specializing in political and governmental consulting, representing congressmen, senators, and private sector clients." The business reportedly "[a]dvises clients on free and paid media." The D&B report indicates that Goldman Associates' usual payment arrangement as of March 5, 1999, was that "a one time retainer is paid up front and additional payments are due on the first of the month for services;" it is unknown at this time whether Goldman Associates' usual payment arrangement was the same or different in 1993 and 1994. Michael Goldman is listed as the "owner" of Goldman Associates, and no other partners or shareholders are listed. The D&B report does not indicate that the business is incorporated, and the Commission is in possession of other information indicating that Goldman Associates is unincorporated.

The first committee reported incurring an additional \$15,800 in debt to Goldman Associates in 1994, and reported \$4,800 in payments on the outstanding debt in 1994, leaving at year's end a reported debt of \$19,500. As best the transactions can be reconstructed, and assuming that payments were applied to the debt that had been outstanding the longest, \$15,200 of the first committee's 1994 year-end debt to Goldman Associates apparently had been outstanding for at least 90 days, and \$3,700 apparently had been outstanding for more than one year.

After his defeat in the general election, and throughout 1995, the first committee remained Tierney's only authorized committee. The first committee filed quarterly reports for

the first two quarters of 1995. By June 30, 1995, the first committee reported reducing its debt to Goldman Associates from \$19,500 to \$15,000, all of which by this time had apparently been outstanding for between five and 15 months. Thereafter, the first committee continued to report \$15,000 in outstanding debt to Goldman Associates on each of its reports through its 1998 Mid Year Report, which was the last report it filed.

On March 29, 1996, Tierney filed a new Form 2, declaring himself once again a candidate for U.S. Representative from the Sixth District. Tierney listed a new committee, "John Tierney for Congress '96" (now known as Tierney for Congress, FEC ID #C00318196, and hereinafter referred to as "the second committee") as his principal campaign committee, and "John Tierney for Congress," the "first committee," as an "other authorized committee." On the same day, the second committee filed a Statement of Organization with the Commission.

As the 1996 election campaign progressed, the second committee employed the services of Goldman Associates. The second committee reported disbursements to Goldman Associates totaling \$6,000 between July 2 and November 4, 1996.¹

For the 1998 election cycle, Representative Tierney elected to continue the second committee's operations rather than form yet another committee. The second committee once again employed the services of Goldman Associates. The second committee reported disbursements to Goldman Associates totaling \$14,688 between May 5 and November 6, 1998.²

¹ Tierney was again nominated, receiving 85 percent of the vote in the September 17, 1996 primary election, and was elected to Congress by a margin of 360 votes out of more than 276,000 cast in the November 5, 1996 general election.

² Representative Tierney was reelected in the November 3, 1998 general election, receiving 54 percent of the vote.

All of the first committee's \$15,000 debt to Goldman Associates has now been outstanding for at least four and a half years, and some of it has been outstanding for in excess of five years. None of the second committee's disbursements to Goldman Associates have ever been reported as made to pay down any of the first committee's outstanding debt. Instead, they appear to have been made in connection with the 1996 and 1998 elections.

3. Analysis

The Commission is in possession of a statement in which the first committee asserts that Goldman Associates "extended credit [to the first committee] in the ordinary course of [its] business on substantially similar terms to that offered to [its] other customers." However, the Commission currently possesses no information whatsoever to substantiate this assertion. Perhaps to the contrary, the D & B report for Goldman Associates states that its usual payment terms, at least at the present, involve payment of a retainer plus monthly payments that are *due* on the first of each month. Moreover, while the first committee's statement is relevant to the question of whether the original extensions of credit to the first committee by Goldman Associates were contributions, *see* 11 C.F.R. §§ 100.7(a)(4), 116.3(a), they do not address the separate question of whether the extensions of credit became contributions over time because of the vendor's failure to make commercially reasonable attempts to collect the debts. The length of time the first committee's debt to Goldman Associates has been outstanding, combined with information in the first committee's statement and the second committee's disclosure reports about the ongoing business relationships between the vendor and the second committee, raises this separate question. *See* 11 C.F.R. § 100.7(a)(4).

Although the first committee has stated that "[b]oth the candidate and the debtor[] [sic] anticipate that all debts of the [old] committee will be paid in full," there is no indication that the

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vendor has made any attempt to collect the debt owed it. Neither is there any indication that the first committee has made any payment on the debt since the second quarter of 1995, or that the second committee has ever made any payment on the debt, or that either committee has ever attempted to raise funds to pay the debt.³ Moreover, the vendor has continued to provide services to the second committee through two election campaigns despite the outstanding debt owed by the first committee. *See* 11 C.F.R. § 116.4(d)(3)(ii). It therefore appears possible that the extensions of credit by Goldman Associates ripened into contributions due to a lack of commercially reasonable attempts by the creditor to collect what it was owed by the first committee.

Accordingly, there is reason to believe that Michael Goldman d/b/a Goldman Associates violated 2 U.S.C. § 441a(a)(1)(A) by making at least \$13,000 in excessive contributions in the form of extensions of credit which he did not attempt to collect in a commercially reasonable manner.

³ In fact, after the first committee raised more than enough money in the last half of 1995 and the first quarter of 1996 to pay the debts, it instead transferred all of the money to the second committee to use in connection with the 1996 campaign.