



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 23 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Marc E. Elias, Esquire
Perkins Coie, LLP
607 Fourteenth Street, NW
Washington, D.C. 20005-2011

RE: MURs 4935 and 5057
(Dear for Congress and Abraham
Roth, as Treasurer)

Dear Mr. Elias:

On October 15, 1999, the Federal Election Commission notified Dear for Congress and Abraham Roth, as Treasurer ("Committee"), your clients, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, on July 25, 2000, the Federal Election Commission found that there is reason to believe Dear for Congress, Inc. and Abraham Roth, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a); 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d); 2 U.S.C. § 441f; 11 C.F.R. § 104.5(a); 2 U.S.C. § 434(b)(4)(F); 2 U.S.C. § 434(b)(8); 2 U.S.C. § 434(a)(6)(A), provisions of the Act and the Commission's regulations. 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 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

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

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.

If you have any questions, please contact, Joel J. Roessner or Angela Whitehead Quigley, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold
Chairman

Enclosure
Factual and Legal Analysis

cc: Noach Dear

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MURs 4935 and 5057

RESPONDENT: Dear for Congress and Abraham Roth, as Treasurer

I. GENERATION OF MATTER

Matter Under Review (“MUR”) 5057 was generated from an audit of the activities of Dear for Congress, Inc. (“the Committee”) during the 1998 election cycle, undertaken in accordance with section 438(b) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-451 (“the Act”).¹ MUR 4935 was generated by a Complaint filed by Sandy Aboulafia, Vice President of the Women’s Democratic Club of New York City.

II. COMPLAINT AND REPSONSE

A. Complaint

The Complaint alleges, among other things, with respect to the 1998 election cycle, that the Committee accepted excessive contributions and prohibited corporate contributions, filed an incorrect Mid-year Report, and “failed to file required reports with the FEC on October 15, 1998, and January 31, 1998 [sic].”

B. Response

For its response to the Complaint, the Committee filed a letter dated March 1, 2000, in which it states that “each of [the] allegations [in the Complaint] was also raised in the Audit

¹ The Commission approved the Final Audit Report on January 13, 2000.

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Report” and which incorporates by reference its response to the Interim Audit Report (“IAR”) as its response to the Complaint.²

While there is overlap between the issues raised in the Committee’s response to the IAR and the allegations in the Complaint, this overlap is not complete, notwithstanding the Committee’s assertion to the contrary. Specifically, the Response to the IAR does not contain any response which specifically addresses Ms. Aboulafia’s claims that the Committee accepted prohibited corporate contributions, filed an incorrect Mid-year Report, and failed to file reports due on October 15, 1998, and January 31, 1999.³

Indeed, the only claim which both is raised in the Complaint and is specifically addressed in the Response to the IAR is the claim that the Committee accepted excessive contributions. The Committee does not appear to deny the violation. Rather the Committee offers the explanation that it:

. . . attempt[ed] to comply with the broad provisions of the Act, while failing to grasp fully its more detailed provisions. While the Committee’s staff and volunteers understood the practical rule that a couple together could contribute up to \$4,000 for a candidate’s effort to seek federal office, they did not grasp the series of technical and procedural requirements to which a committee must adhere in order to raise such amounts.

The Committee offers no defense or explanation with respect to its acceptance of contributions greater than \$4,000.

² The Audit Division completed the IAR on September 3, 1999, and the Committee responded to the IAR on November 5, 1999.

³ The Response to the IAR does seek generally to excuse the Committee for any violations of the Act, arguing that “the Committee . . . was aware of the broad contours of the Act and sought to follow them, yet ultimately experienced difficulties because its staff and volunteers were not well-versed in the Act’s complexities.”

III. FACTUAL AND LEGAL ANALYSIS

A. Law

1. **Contribution Limits**

A contribution is a gift, subscription, loan, advance, deposit of money, or anything of value made by a person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). The Act and the Commission's regulations prohibit any person from making contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1). No candidate or political committee may knowingly accept any contribution that violates the contribution limitations. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

2. **Prohibited Contributions**

Corporations are prohibited from making contributions in connection with federal elections. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2. No candidate or political committee may knowingly accept such a contribution. 11 C.F.R. § 114.2(d).

3. **Contributions Made In The Name Of Another**

The Act prohibits any person from making a contribution in the name of another person. 2 U.S.C. § 441f. The Act also prohibits any person from knowingly permitting his or her name to be used to effect a contribution made by one person in the name of another person. *Id.* Finally, the Act prohibits the knowing acceptance of a contribution made by one person in the name of another person. *Id.*

4. Reporting Requirements

Each treasurer of a political committee shall file reports of its receipts and disbursements. 2 U.S.C. § 434(a)(1). Each report shall disclose for the appropriate reporting period all receipts. 2 U.S.C. § 434(b)(2). Each report also shall disclose for the appropriate reporting period all disbursements, including contribution refunds. 2 U.S.C. § 434(b)(4)(F). Finally, each report must disclose the political committee's outstanding debts. 2 U.S.C. § 434(b)(8).

A political committee's quarterly report is due to be filed no later than the fifteenth day following the close of the quarter. 11 C.F.R. § 104.5(a). A political committee's year-end report is due to be filed on January 31 of the following year. *Id.*

5. 48-Hour Notice Requirements

The Act requires the principal campaign committee of a candidate to notify the Clerk of the House, the Secretary of the Senate, or the Commission, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the twentieth day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5. Notification must be made within 48 hours after the receipt of the contribution and must include the name of the candidate, the office sought by the candidate, the identity of the contributor, the date of receipt, and amount of the contribution. *Id.* This notification is in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

B. Analysis

1. Contribution Limits

In connection with its audit of the Committee, the Audit staff reviewed copies of contribution checks accepted by the Committee for the 1998 election cycle. Based on this review, it appears that the Committee accepted contributions in excess of \$1,000 from 327

contributors. The aggregate amount of contributions in excess of \$1,000 accepted by the Committee was \$563,913. Based on the dates on which the checks were executed, it appears that the Committee first began accepting contributions in excess of \$1,000 on or about July 11, 1997.

In the Interim Audit Report ("IAR"), the Audit staff recommended that the Committee provide documentation that established that the contributions were not excessive. The Committee has made no demonstration that the contributions were not excessive. The Committee's response to the identification of apparent excessive contributions instead stresses the candidate's supporters' "relatively little experience with the Federal Election Campaign Act and its accompanying regulations" and explains that, although the Committee lacked full understanding of the technical and procedural requirements outlined by the Act, it attempted to comply broadly with the provisions of the Act through:

- Its efforts to limit each contribution attributed to an individual to \$1000;
- Its efforts to seek reattribution letters;
- Its establishment of a separate account for funds raised for the general election and the fact that some contributors specifically designated their contributions to the general election;
- Its collection of employer and occupation data;
- Its filing of late contribution notices for approximately 91 percent of the funds received during the 20 days preceding the primary, with notices missing for only four contributions.⁴

Further, the Committee explains that even its treasurer did not fully comprehend the Act's provisions when he informed the Audit staff that "he did not consider contributions in the

⁴ The Committee's response highlights its solicitation materials as a demonstration of how the Act's intricacies interfered with its attempts to comply generally with the Act. The Committee's solicitations suggested that a couple could contribute \$2,000, but did not explain that each contributor was required to sign the check, money order, other negotiable instrument or a separate writing. *See* 11 C.F.R. § 110.1(k).

amount of \$2,000 made by checks drawn on joint checking accounts to be excessive.” The Committee’s response also emphasizes its efforts to refund the excessive contributions and its commitment to disclosing pending refunds on Schedule D forms.⁵

Nothing in the Committee’s response refutes or justifies its apparent knowing acceptance of contributions in excess of the \$1,000 aggregate limit on personal contributions. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a). The \$1,000 contribution limitation is a fundamental restriction on the financing of federal election campaigns, and the Commission rejects the Committee’s attempt to dismiss this limit as an easily misunderstood or overlooked technicality. Therefore, there is reason to believe that Dear for Congress and Abraham Roth, as Treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

2. Prohibited Contributions

The Complainant alleges that, based on the Committee’s reports, the Committee accepted and spent prohibited corporate contributions. While conducting its audit of the Committee, the Audit staff reviewed copies of contribution checks accepted by the Committee during the 1998 election cycle and identified 19 possible prohibited contributors in the aggregate amount of \$12,320. These contributions were made by corporations between September 1997 and September 1998, and ranged in amount from \$100 to \$2,500.⁶ The Committee’s response to the Complaint offers no defense regarding these alleged prohibited corporate contributions.

⁵ The Final Audit Report reflected that the Committee has thus far made refunds to 80 contributors totaling \$254,550, rather than the refund to 107 contributors totaling \$275,120 claimed by the Committee in its response. The Audit staff also noted that the Committee, as of the date of the Final Audit Report, had not disclosed on its Schedules D the debt resulting from the remaining refunds due to the contributors. However, the Committee’s April Quarterly Report 2000 reflected the remaining refunds due as debts on the Schedules D.

⁶ Fifteen of these contributions were paid to the order of Dear for Congress, three were made out to Noach Dear, and one to Friends of Noach Dear.

Therefore, there is reason to believe that Dear for Congress and Abraham Roth, as Treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d).

3. Contributions Made In The Name Of Another

In connection with its audit of the Committee, the Audit staff identified fifteen instances in which the Committee, during the 1998 election cycle, accepted from individual contributors two or more money orders bearing sequential serial numbers. It appears that, in several instances, money orders purporting to be from different individuals contained in a particular sequence were executed in the same handwriting, including the purported signature of the person drawing the money order.

In the case of three contributors who each contributed \$1,000 via six consecutively numbered money orders, it appears that all three of the contributors were employed by Executive/Essex Gallery, Ltd. It further appears from public records filed with the Commission that another sequence of money orders was contributed by employees of Byrne's Elegant Carriages.

The pattern of contributions made via sequential money orders suggests that the contributions may have been made by one person in the name of another. In its Response to the IAR, the Committee disputes this conclusion, arguing that "there is nothing inherently inappropriate or suspect about contributions made through money order." With respect to the fact that it appears that money orders for contributions were issued *seriatim*, the Committee argues that "there is no prima facie evidence of contributions in the name of another. Rather, the evidence suggests only concerted political action." Finally, the Committee submits signed statements from several of the contributors in question which, according to the Committee, "attest[] to the fact that their contributions came from personal funds."

The circumstances surrounding the Committee's receipt of contributions present sufficient grounds for finding reason to believe that the Committee knowingly received contributions made by one person in the name of another. The money orders are not only numbered sequentially, but in many instances also appear to have been signed by a single individual. In addition, in several instances it appears that the purported contributors associated with a particular sequence of money orders worked for the same employer.

Furthermore, the Commission is not persuaded that the signed statements submitted by some of the purported contributors of money orders adequately resolve the matter. In its letters soliciting a signed statement, the Committee informed the contributor:

The Noach Dear for Congress Committee is reviewing its 1998 receipts. Our records show that you made a personal contribution for [amount] in the form of a money order [serial number], dated [date]. If this information is correct, please sign the attached statement and return it to us in the enclosed stamped return envelope. If this information is incorrect, please note any changes.

The prepared statements tendered to the contributors state "[t]his confirms that I contributed [amount] from my personal funds to the Dear for Congress Committee on [date], money order [serial number]."⁷

Neither the letter nor the prepared statement appear calculated to probe the question whether the money order contributions were made by one person in the name of another. The letter on its face appears to be seeking confirmation of various data, in particular the amount, date and money order number associated with the contribution, and the recipient's attention is in no way drawn to the fact that the statement also confirms that the contribution was made from personal funds. Furthermore, to the extent that any person knowingly agreed to allow his or her name to be used for the purpose of making a contribution for another, that person might well be

⁷ Both the letter and the tendered statement set out the particulars of the amount, serial number and date

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reluctant to confess this fact in response to the Committee's letter. Finally, the statements submitted by the Committee address only some of the money order contributions in question, suggesting the possibilities that the Committee did not address its inquiry to all of the persons whose money order contributions are in question and/or that persons receiving the Committee's letter declined to sign the prepared statement. Therefore, there is reason to believe that Dear for Congress and Abraham Roth, as Treasurer, violated 2 U.S.C. § 441f.

4. Reporting Requirements

a. Late Filed Reports

The Committee's quarterly report for the third quarter of 1998 was due to be filed with the Commission no later than October 15, 1998. 11 C.F.R. § 104.5(a). The Committee's 1998 year-end report was due to be filed with the Commission no later than January 31, 1999. *Id.*

The Complaint alleges that the Committee failed to file reports due to the Commission on October 15, 1998, and January 31, 1999. The Committee's response to the Complaint, which incorporates its response to the IAR, states that the failure to file the year-end report was the result of a deliberate decision by the Treasurer, and cites the Treasurer's concern with accounting issues and the desire for accuracy as the basis for his decision to not file the report.

According to Commission records, the Committee filed its quarterly report for the third quarter of 1998 on October 16, 1998 (one day late) and its year-end report for 1998 on November 5, 1999 (278 days late). Therefore, there is reason to believe that Dear for Congress and Abraham Roth, as Treasurer, violated 11 C.F.R. § 104.5(a).

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b. Improper Reporting

The Final Audit Report ("FAR") noted that the Committee's 1999 Mid-year Report disclosed starting cash on hand of \$78,451 (as of January 1, 1999), total receipts of \$101,596 and total disbursements of \$300,878 (all refunds of contributions), and closing cash on hand of -\$120,831. The FAR further stated that, when questioned, the Treasurer stated that refund checks had been written, but not mailed due to insufficiency of funds. Thus, it appears that the Committee improperly reported as disbursements amounts which should have been reported as debts. The Committee in no way disbursed refunds, because the recipients of the refunds would not have been able to cash the checks due to the Committee's insufficient funds and due to the fact that they never received the refund checks. Therefore, there is reason to believe that Dear for Congress and Abraham Roth, as Treasurer, violated 2 U.S.C. § 434(b)(4)(F) and 2 U.S.C. § 434(b)(8).

5. 48-Hour Notice Requirements

The Commission's audit of the Committee revealed four contributions with respect to which the Committee was required to file 48-hour notices, but failed to so. *See* 2 U.S.C. § 434(a)(6)(A). The aggregate amount of these four contributions was \$7,000. The audit also revealed 45 contributions with respect to which the Committee failed to file required 48-hour notices until more than 48 hours after receipt. The aggregate amount of these 45 contributions was \$70,500. *Id.*

The Committee's response to this issue is to state that, while it failed to file a required 48-hour notice within the time limit set by law with respect to the contributions identified in the audit report, it ultimately did file untimely notices with respect to approximately 91% of the funds in question. However, nothing in the Committee's response refutes or justifies its apparent

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failure to file required 48-hour notices within the time period prescribed by law. Therefore, there is reason to believe that Dear for Congress and Abraham Roth, as Treasurer, violated 2 U.S.C.

§ 434(a)(6)(A).

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