



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 23 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Abraham Roth, Treasurer
Friends of Noach Dear '93
c/o Roth & Company, LLP
5612 18th Avenue
Brooklyn, NY 11204

RE: MUR 4935

Dear Mr. Roth:

On October 15, 1999, the Federal Election Commission notified Friends of Noach Dear '93 and Abraham Roth, as Treasurer ("Committee"), 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 you at that time.

Upon further review of the allegations contained in the complaint, on July 25, 2000, the Federal Election Commission found that there is reason to believe Friends of Noach Dear '93 ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Title 11 of the Code of Federal Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, 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.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact

24-04-409-6766

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR

4935

RESPONDENT:

Friends of Noach Dear '93 and Abraham Roth, as Treasurer

I. GENERATION OF MATTER

Matter Under Review ("MUR") 4935 was generated by a Complaint filed by Sandy Aboulafia, Vice President of the Women's Democratic Club of New York City alleging that Friends of Noach Dear '93 violated the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-451 ("the Act"). The Complaint alleges, with respect to the 1998 election cycle, that Friends of Noach Dear '93, which appears to be a campaign committee established under New York state law for the purpose of supporting Mr. Dear's candidacy for the New York City Council, funded a \$20,000 poll which had the purpose of measuring whether Mr. Dear should become a candidate in the 2000 election for nomination for and election to the United States House of Representatives (New York 9th District), thereby making an excessive in-kind contribution to Dear 2000, Inc.

II. FACTUAL AND LEGAL ANALYSIS

A. Law

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).

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The Commission's regulations state that funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions. 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). However, if the individual subsequently becomes a candidate, any funds received are contributions and any payments made are expenditures subject to reporting requirements of the Act. 11 C.F.R. § 101.3.

The purchase of opinion poll results by a candidate or a candidate's authorized political committee or agent is an expenditure by the candidate or a potential expenditure under 11 C.F.R. § 100.8(b)(1). 11 C.F.R. § 106.4(a). Additionally, if a political committee or other person not authorized by a candidate to make expenditures purchases such poll results and a candidate, a candidate's authorized political committee, agent, or another unauthorized political committee subsequently accepts the poll results, an in-kind contribution by the purchaser to the candidate or other political committee and an expenditure by the candidate or other political committee results. 11 C.F.R. § 106.4(b). If an individual uses such poll results to decide whether to become a candidate, a contribution or expenditure does not exist until he or she becomes a candidate. 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1).

B. Analysis

Friends of Noach Dear '93 is a registered authorized committee with the Board of Elections in New York State. Dear 2000, Inc. ("Dear 2000") is the principal campaign committee of Mr. Dear for his campaign for the Democratic nomination for the United States House of Representatives (New York 9th District) in the 2000 election.

The Complainant alleges that Friends of Noach Dear '93 funded a poll of residents within the 9th Congressional District.¹ The poll thus encompassed some voters outside Mr. Dear's Council District but within the larger 9th Congressional District. According to the Complaint, the poll appeared calculated to measure the viability of Mr. Dear challenging Anthony Wiener, the incumbent representative for the 9th Congressional District. The Friends of Noach Dear '93 City Council Disclosure Statement dated July 15, 1999, reveals that it paid Penn, Schoen and Berland \$20,000 on June 28, 1999 for polls.

On December 21, 1999, Mr. Dear filed a Statement of Candidacy with the Commission for the 2000 election cycle in which he named Dear 2000, Inc. as his principal campaign committee. Upon his declaration of candidacy, any funds Mr. Dear received or spent in connection with determining whether to become a candidate became a contribution or expenditure. 11 C.F.R. § 101.3. This would include any poll purchased by or accepted by Mr. Dear or his authorized political committee. 11 C.F.R. § 106.4. To the extent that Friends of Noach Dear '93 engaged in activities intending to influence Mr. Dear's candidacy for federal office, it made an in-kind contribution to his federal campaign. 2 U.S.C. § 431(8). *See also* Advisory Opinion 1985-38 (by incorporating the name of a federal candidate into its name, state political committee would not become a "political committee" under the Act, but would make an in-kind contribution to the federal candidate's campaign committee). Thus, it appears that the poll purchased by Friends of Noach Dear '93 in June 1999 became a reportable in-kind contribution to Dear 2000 when Mr. Dear became a candidate for federal office in December 1999. 11 C.F.R. § 106.4. *See also* Advisory Opinion 1998-18 (the donation of poll results for

¹ The Complaint references an August 12, 1999 *New York Daily News* article as a basis for its allegations and includes an attached copy of the story

testing the water purposes becomes a contribution when the prospective candidate becomes a candidate, and thus, subject to the Act's limitations). As the cost of the poll was \$20,000, this was an excessive in-kind contribution to Dear 2000 for the 2000 election cycle. 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a)

Accordingly, there is reason to believe that Friends of Noach Dear '93 and Abraham Roth, as Treasurer, violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

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