



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 23 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Abraham Roth, Treasurer
Dear 2000, Inc.
c/o Roth & Company, LLP
5612 18th Avenue
Brooklyn, NY 11204

RE: MUR 4935

Dear Mr. Roth:

On July 25, 2000, the Federal Election Commission found that there is reason to believe Dear 2000, Inc. ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a); 2 U.S.C. § 434(b)(2); and 2 U.S.C. § 434(b)(4), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and 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 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 probable 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 that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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 matter to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Angela Whitehead Quigley or Joel J. Roessner, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

cc: Noach Dear

2025-04-04

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4935

RESPONDENT: Dear 2000, Inc. 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 Dear 2000, Inc. violated the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-451 ("the Act"). The Complaint alleges 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). 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).

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 individual is required to retain records of the names of each contributor, the dates of receipt and amounts of all contributions received and all expenditures made in connection with determining whether he or she should become a candidate. *Id.* Such contributions and expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received. *Id.*

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).

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).

B. Analysis

Friends of Noach Dear '93 is a registered authorized committee with the Board of Elections in New York State. Dear 2000, Inc. 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. ("Dear 2000") 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, respectively. 11 C.F.R. § 101.3. This would include any poll purchased by or

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.

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 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 Dear 2000, Inc. and Abraham Roth, as Treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a). Further, because Dear 2000 did not report the poll as either an in-kind contribution or as an expenditure, there is reason to believe that Dear 2000, Inc. and Abraham Roth, as Treasurer, violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4).²

² The April Quarterly Report for Dear 2000 reveals a \$40,000 disbursement to Penn, Schoen and Berland on January 11, 2000 with a notation of "political consultants." It is unclear whether this expenditure is connected in any way to the Friends of Noach Dear '93 poll.