



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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FEB 23 2005

Steven Lucas, Esq.
Neilsen, Merksamer, Parrinello, Mueller & Naylor, LLP
591 Redwood Hwy, Building 4000
Mill Valley, CA 94941-3039

RE: MUR 5020
Mirage Resorts, Inc.
Punam Mathur

Dear Mr. Lucas:


On February 9, 2005, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

On February 9, 2005, the Commission determined to take no further action against Punam Mathur. The Commission reminds Ms. Mathur that consenting to facilitating the making of corporate contributions is a violation of 2 U.S.C. § 441b(a). Ms. Mathur should take steps to ensure that this activity does not occur in the future.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,


Delbert K. Rigsby
Attorney

Enclosure
Conciliation Agreement

25-04-410-1759

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

In the Matter of

Mirage Resorts, Inc.

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2005 FEB 22 A 11: 14

MUR 5020

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Audrey L. Michael. The Federal Election Commission ("Commission") found reason to believe that Mirage Casino Resorts, Inc. and Punam Mathur violated 2 U.S.C. § 441b(a).¹

NOW, THEREFORE, the Commission and Mirage Resorts, Inc. ("Respondent"), having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(5)(A)(i) and 11 C.F.R. § 111.18(d).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

¹ All of the facts recounted in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), are prior to the effective date of BCRA and all citations to the Commission's regulations are to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

Actors

1. Mirage Resorts, Inc. ("Mirage") is a corporation within the meaning of 2 U.S.C. § 441b(a). Mirage is a subsidiary of MGM MIRAGE, Inc.

2. *Le Cirque* is a luxury restaurant that is located in the Bellagio and is an independent company from Mirage. Bellagio's parent company is Mirage.

3. Steve Wynn was, at all relevant times, Chief Executive Officer and Chairman of Mirage.

4. Bruce Aguilera is Vice President and General Counsel, at Bellagio.

5. Punam Mathur is Senior Vice President of Corporate Diversity and Community Affairs at MGM MIRAGE, Inc., and the former Director of Government and Community Relations at Mirage.

6. Gormley for Senate Primary Election Fund (the "Committee") is a political committee within the meaning of 2 U.S.C. § 431(4), and was William L. Gormley's authorized political committee for the Republican nomination for the United States Senate in New Jersey in 2000. Alan C. Staller is treasurer of the Committee.

Applicable Law

7. The Act provides that a corporation is prohibited from making a "contribution" of money or anything of value or expenditure in connection with any election for federal office. 2 U.S.C. § 441b(a). A "contribution" includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or campaign committee, in connection with a federal election. 2 U.S.C. § 441b(b)(2).

8. Corporations (including officers, directors or other representatives acting as agents for the corporation) are also prohibited from "facilitating the making of contributions to

candidates or political committees, other than to the separate segregated funds of the corporations.” 11 C.F.R. § 114.2(f).

9. Generally, communications by a corporation to its executives or administrative personnel are not considered contributions. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. § 114.1(c). However, if the activity goes beyond such communication to “facilitating the making of a contribution,” it becomes a prohibited contribution by the corporation or its officers or directors because the corporation has provided something of value to that candidate or campaign committee. 11 C.F.R. § 114.2(f)(1).

10. Facilitation means “using corporate . . . resources or facilities to engage in fundraising activities in connection with any Federal election.” 11 C.F.R. §§ 114.2(f)(1)-(2). Facilitation includes directing staff to plan, organize, or carry out a fundraising project as part of their work responsibilities using corporate resources unless the corporation receives advance payment for the fair market value of such services; using a corporate list of customers, clients, vendors or others who are not in the restricted class to solicit contributions or distribute invitations to the fundraiser; providing catering services operated or obtained by the corporation unless the corporation receives advance payment for the fair market value of the services; and using corporate resources and providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes or other similar items. 11 C.F.R. §§ 114.2(f)(2)(i)-(ii). The “collection of contributions by any officer, director or other representative of the corporation . . . is an example of a prohibited facilitation of contributions under 11 C.F.R. § 114.2(f).” 11 C.F.R. § 114.4(c)(2)(iii); see AOs 1987-29 and 1986-4.

11. Corporations also are prohibited from acting as conduits for contributions earmarked to candidates or their authorized committees. See 11 C.F.R. § 110.6(b)(2)(ii).

12. Exceptions to the general prohibition against corporate facilitation of contributions include soliciting contributions to be sent directly to candidates if the solicitation is directed to the corporation's restricted class or soliciting contributions which are to be collected and forwarded by the corporation's separate segregated fund in accordance with 11 C.F.R. § 110.6. 11 C.F.R. §§ 114.2(f)(3)(ii) and 114.2(f)(4)(ii); see 11 C.F.R. § 114.1(a)(2)(i).

Factual Background to Violations

13. Respondent held a fundraiser for the Committee in Las Vegas, Nevada on February 9, 2000, in a private room at *Le Cirque*. Approximately 29 people, including Mr. Wynn and Ms. Mathur, attended the fundraiser.

14. Mr. Wynn previously had approached Mr. Gormley directly on behalf of Respondent and asked to host the fundraiser for the candidate. Respondent planned and organized the fundraiser, including reserving a location to hold the fundraiser, arranging for catering, sending invitations for people to attend, and soliciting contributions. Respondent also collected and forwarded contributions to the Committee.

15. In-house legal counsel at Bellagio, Bruce Aguilera, wrote an invitation to attend the fundraiser, dated January 11, 2000. The invitation read

Mr. Wynn is hosting an event for William Gormley to support his candidacy for the United States Senate. The luncheon event will be held on February 9 at 11:30 a.m. in *Le Cirque*.

The contribution limits are \$2,000 per person. Therefore, a husband and wife can give a total of \$4,000. However, each spouse must sign the check if the contribution is from a joint account. This donation will cover the primary and general elections. Checks should be made payable to "Gormley for U.S. Senate" and can either be brought to the luncheon or mailed to Gormley for U.S. Senate at 401 New Road, Suite 103, Linwood, New Jersey 08221.

William Gormley is currently a New Jersey State Senator.

Please RSVP to my assistant, Sheryl, at [XXX-XXXX]

I am available to discuss if you have any questions.

Thank you.

16. A distribution list on the second page of the invitation listed seventeen top Mirage executives who received the invitation, including Stephen A. Wynn, CEO & Chairman of Mirage Resorts, Inc.; Elaine P. Wynn, Director; Richard D. Bronson, President of subsidiary New City Development; George J. Mason, Director; Ronald M. Popeil, Director; Daniel B. Wayson, Director; Melvin B. Wolzinger, Director; Frank Visconti, President of Retail Division; Bruce Levin, corporate counsel; Bobby Baldwin, President of subsidiary the Bellagio Hotel; Barry Shier, President of subsidiary Golden Nugget; Marc Schorr, President of Mirage; Bill McBeath, President of subsidiary Treasure Island; Bob Sheldon, Executive Vice President at subsidiary Golden Nugget; Kenny Wynn, President of the Architect and Design Group; Mark Juliano, President of subsidiary Atlantic City Project; and Al Faccinto, President of International Marketing. All of these individuals were in Mirage's restricted class at the time of the solicitation.

17. Ms. Mathur also received a copy of the invitation. Ms. Mathur then had conversations about the fundraiser with other people, including several people outside of the restricted class and outside of the corporation, and invited them all to attend and contribute. Ms. Mathur then edited the invitation written by Mr. Aguilera and instructed her assistant, Andrea Bearden, to make the changes and fax the additional invitations as part of her work responsibilities on Mirage facsimile cover sheets to Jan Jones, Senior Vice President of Governmental Affairs at Harrah's Entertainment, Inc.; Delores Owens, a senior executive at Caesar's Palace; Mark Brown, a Senior Vice President at Station Casinos and the Trump Taj Mahal; and Joe Brunini, an executive in International Marketing at Mirage.

18. Respondent also created an Excel fundraising chart listing people who it invited to the fundraiser, including several people who were outside of the corporation, and

maintained it by keeping track of who planned to attend, who planned to contribute and how much, and whether contributions had already been mailed or collected by someone within Mirage. Ms. Mathur also instructed her assistant as part of her work responsibilities to confirm who would attend the fundraiser and how much they would contribute. The additional people outside of Mirage that were listed on the fundraising chart include Charles Mathewson, Chairman of International Game Technology, Inc., a vendor of Mirage; Don Synder, President of Boyd Gaming, a competitor of Mirage; Mark Tratos, an attorney at Quirk, Tratos & Roet; Judy Patterson, an Executive Vice President at the American Gaming Association, and Nick Casiello and John Groom, who both worked at Harrah's. Mirage invited at least 35 persons to attend the fundraiser and contribute to the Committee.

19. Ms. Mathur also instructed her assistant as part of her work responsibilities to work out a catering menu for the fundraiser. Her assistant then coordinated with the *Le Cirque* catering department per Ms. Mathur's instructions, and presented the proposed menu to Ms. Mathur, who approved it for the fundraiser. A private room at *Le Cirque* was also reserved to hold the fundraiser.

20. Ms. Mathur also instructed her assistant as part of her work responsibilities to get a contribution commitment from some non-attendees and to send a messenger from within Respondent's Government and Community Relations department to collect contribution checks. Ms. Mathur recorded these contribution commitments on the fundraising chart and on her copy of the original invitation.

21. Mr. Gormley, who had traveled from New Jersey to Las Vegas to attend the fundraiser the day before, did not collect any contributions at the fundraiser and the Committee did not bring any staff to the fundraiser to collect any contributions. Some fundraiser

attendees brought their own contribution checks with them to the fundraiser, and some attendees also brought contribution checks from their spouses.

22. Mr. Wynn gave a speech at the fundraiser generally praising the candidate and emphasizing his importance to the gaming industry. Some of the attendees were invitees outside of the corporation.

23. Respondent collected the contributions at the fundraiser and indicated to the candidate that it would forward the contributions when it had received them all. Respondent received some of the contributions after the fundraiser, and there was a lag time between the fundraiser and when it sent them to the Committee. Some of the checks that Respondent forwarded were dated weeks before the fundraiser (in January), while others were dated weeks after the fundraiser (in March). Respondent eventually collected and forwarded a total of \$28,000 in individual contributions to the Committee.

24. The Committee returned one improper \$2,000 contribution check to a donor immediately after receiving it. The Committee then deposited the remaining \$26,000 worth of contributions on March 21, 2000 from persons associated with Respondent and this fundraiser. A note on the front of one deposit slip the Committee used, which listed a majority of the contribution checks from attendees of the Mirage fundraiser, stated, "These are all Steve Wynn's employees – signatures for designations will follow – WLG wants checks deposited."

25. The cost of the private room at *Le Cirque* used to hold the fundraiser was \$1,000. A receipt for the event given to the Committee shows that the fair market value of catering, with taxes and a 20% service charge, cost \$1,718.51. Thus, the total cost of the fundraiser (room rental plus catering) was \$2,718.51. Respondent did not receive advance payment for the costs of the fundraiser from the Committee. Respondent then provided the

Committee with a \$1,000 discount on the fair market value for the food served at the fundraiser pursuant to 11 C.F.R. §§ 100.7(b)(7); 114.1(a)(2)(v). The Committee sent a check to the Bellagio for "event costs" of \$1,718.51 on February 17, 2000.

V. Respondent violated 2 U.S.C. § 441b(a) by facilitating the making of corporate contributions to the Committee. Respondent will cease and desist from violating 2 U.S.C. § 441b(a).

VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Forty Thousand dollars (\$40,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent has agreed to distribute a memorandum to all the members of its restricted class, including the restricted class members of Respondent's affiliated companies, and the administrative and clerical support personnel for such restricted class members, reminding them of the prohibitions in the Act and the Commission's regulations against facilitating the making of corporate contributions and consenting to such facilitation, and to provide written assurance to the Commission that this distribution took place.

VII. Punam Mathur, without admitting or denying any violation of the Act, agrees to cease and desist from violating 2 U.S.C. § 441b(a).

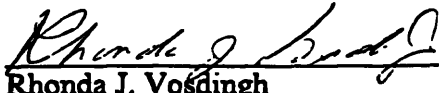
VIII. Respondent shall have no more than thirty days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement.

IX. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

X This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: 
Rhonda J. Vosdinger
Associate General Counsel
for Enforcement


2/22/05
Date

FOR THE RESPONDENT:


Steven Lucas, Esq.
Counsel to Mirage Resorts, Inc.

2/3/2005
Date

FOR PUNAM MATHUR:


Steven Lucas, Esq.
Counsel to Punam Mathur

2/3/2005
Date