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FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR:

5072

DATE COMPLAINT FILED:

August 17, 2000

DATE OF NOTIFICATION:

August 23, 2000

DATE ACTIVATED:

December 7, 2001

EXPIRATION OF STATUTE
OF LIMITATIONS:

August 11, 2005

COMPLAINANT:

Michael Deutsch

RESPONDENTS:

Gore 2000, Inc. and Jose Villarreal, as treasurer
David Jackson

**RELEVANT STATUTES AND
REGULATIONS:**

2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(11)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 110.1(b)
11 C.F.R. § 110.9(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

Michael Deutsch filed a complaint with the Commission alleging that Gore 2000, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act") by accepting an excessive in-kind contribution in the form of an internet domain name, and that David Jackson may have violated the Act by making that contribution.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

On March 22, 2000, David Jackson registered the domain name "gorelieberman.com" with mydomain.com for \$70. According to his affidavit, Mr. Jackson hoped that Gore would choose Lieberman as his running mate, and that Mr. Jackson could then donate the domain name to the campaign. See Joint Response at Exhibit A.¹ In early August, 2000, after Al Gore selected Joseph Lieberman as his running mate, Mr. Jackson contacted Gore 2000, Inc. (hereinafter "the Committee") and offered to give the Committee the domain name for free. Committee representatives explained to Mr. Jackson that they would have to pay fair market value for the domain name, which they calculated as being equal to the original domain registration fee of \$70 incurred by Mr. Jackson plus \$30. The agreement was formalized by a Purchase Agreement signed by Mr. Jackson and a representative of the Committee. See Joint Response at Exhibit C.

The complainant alleges that Mr. Jackson violated the Act by contributing the internet domain name gorelieberman.com to Gore 2000, because "[p]ress reports have indicated that political domains for candidates in Presidential primaries had been sold for many thousands of dollars, and surely the fair market value of 'gorelieberman.com' (either to proponents or opponents of the ticket) is much higher." Therefore, the complainant alleges, Mr. Jackson violated the Act by making an excessive contribution and Gore 2000 violated the Act by accepting the excessive contribution.

In their joint response to the complaint, the Respondents contend that Mr. Jackson did not make a contribution because the Committee paid the domain registration fee plus an additional

¹ Based on a review of disclosure reports filed with the Commission, it does not appear that Mr. Jackson contributed any money to Gore 2000, Inc. during the 2000 election cycle.

amount to compensate Mr. Jackson for his time, and that this equaled the fair market value of the domain name. Mr. Jackson's affidavit states, "I am not in the business of selling domain names. Nor do I consider myself a cyber squatter, meaning someone who demands as [sic] large sum of money in order to transfer a domain name." See Joint Response at Exhibit A. Respondents further argue that websites have no value until they are created and supplied with an infrastructure filled with unique content. Therefore, simply selling a blank website page with the name "gorelieberman.com" cannot be considered to be worth more than what it costs to register that name, and surely not \$1,000 or more.

B. The Law

The Act defines "contribution" to include "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).² The term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). Contributions to political committees must be reported in accordance with the Act. 2 U.S.C. § 434(b).

During the 2000 election cycle, then-applicable provisions of the Act provided that no person shall make contributions to any candidate and his or her authorized political committee 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). "Person" is defined as "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of

² All of the facts relevant to these matters 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 Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

persons, but such term does not include the Federal Government or any authority of the Federal Government." 2 U.S.C. § 431(11). Candidates and political committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

C. Analysis

This matter centers around the value of the internet domain name *gorelieberman.com*. There is no contribution if the fair market value was equal to or less than \$100, the amount paid to Mr. Jackson in the purchase agreement. Further, because Mr. Jackson could make a personal contribution of \$1,000, there can only be an excessive contribution if there is a basis on which to conclude that the domain name was worth more than \$1,100.

Without providing any evidence to support his statement, the Complainant states that "[P]ress reports have indicated that political domains for candidates in Presidential primaries had been sold for many thousands of dollars." Independent research by this Office has not uncovered any information concerning any of the "press reports" referenced by the Complainant. The absence of information regarding any such purported sales makes it difficult to determine the value of a domain name. It is not possible to conclude that the domain name was worth more than the \$1,100 required for an excessive contribution without engaging in the type of purely speculative assertion that the Commission has rejected as the basis for finding reason to believe. See MUR 4850 and the Statement of Reasons issued in MUR 4960.

While it is true that cybersquatters occasionally profit from buying various domain names in anticipation that people and companies to whom the domain names could refer will pay a price substantially higher than the registration fee to secure the domain name, the fact is that

1 Mr. Jackson has submitted an affidavit indicating that he is not in that business.³ See Joint
2 Response at Exhibit A. All of the available information suggests that the sale of the domain
3 name was a relatively simple transaction entered into by two parties who negotiated a satisfactory
4 price and formalized the agreement with a contract. Mr. Jackson was paid his full out-of-pocket
5 costs, and an additional amount which could be viewed as compensation for the time he spent in
6 registering the domain name. In many respects, there is no difference in this case between the
7 sale of something intangible like a domain name and the sale of something tangible, such as a
8 piece of furniture.⁴

9 There is no question that the domain names for well-known websites like
10 washingtonpost.com or fec.gov are extremely valuable. But that is because there is a
11 fully-developed website at those domain names. If one were to type "fec.gov" into an Internet
12 browser and a blank page was revealed, there would be no worth to that website. It is the same
13 with gorelieberman.com. Mr. Jackson sold the Committee a name and a blank page. It was not
14

³ In such instances, it is not the name itself which has value more than its registration fee. It is the fear that affected entities have if the domain name is purchased by those who might fill it with untrue or unsavory content which leads some to pay inflated prices. If gorelieberman.com had been held by a cybersquatter, but that individual had no ability to create a website or to sell it to someone other than the Committee, the Committee would have no incentive to pay the cybersquatter more than the domain registration fee. Even if Mr. Jackson had been a professional cybersquatter, his ability to profit from registering the domain name may have been diminished by the Anticybersquatting Consumer Protection Act (ACPA) enacted in 1999, see 15 U.S.C. § 1125(d), which relies on nine factors in determining whether a domain user has a bad faith intent to profit from the use of a protected mark. These factors can be summarized as follows: (1) the trademark or other intellectual property rights of the person in the domain name; (2) the extent to which the domain name consists of the name that is commonly used to identify a person; (3) the person's prior use of the domain name to offer goods or services; (4) the bona fide or noncommercial use or fair use of the mark; (5) the intent to divert consumers from the mark owner's online location; (6) the person's offer to transfer or sell the domain name for financial gain without having used the domain name to offer goods or service; (7) the provision of false or misleading information during the registration of the domain name; (8) the registration or acquisition of multiple domain names which the person knows are confusingly similar to marks of others; and (9) the extent to which the mark is or is not distinctive and famous.

⁴ If the gorelieberman.com domain name had still been available to the Committee directly from mydomain.com after Mr. Gore had announced his running mate, the price of the name would not have increased. It still would only have been worth the \$70 registration fee.

until that domain name was linked to the already established AlGore2000.com website with its content that the gorelieberman.com domain name became worth more than its registration fee. Domain names are worth what it costs to register them. *See generally* Dorel v. Arel, 60 F.Supp.2d 558, 561 (E.D.Va. 1999) ("In most cases, a domain name registration is valueless apart from the way it is used by the entity with rights to it").

If Mr. Gore had selected someone other than Mr. Lieberman as his running mate, the gorelieberman.com domain name would have had no value. Even after Lieberman was selected, there was a very narrow window of time that this website was marketable. If there had been more than three months between the convention at which Lieberman was selected as Gore's running mate and the election, perhaps there would have been more of an opportunity for a less than flattering website and potential misuse. In this case there was a rigid timeframe, a limited opportunity for exploitation, and a limited range of customers. Given that its useful life was limited and valueless after the November 2000 election was over, the speculative estimates of the Complainant do not establish that the value of the website was more than \$1,100. Accordingly, there appears to have been no excessive contribution.

For the reasons set forth above, this Office recommends that the Commission find no reason to believe that Gore 2000, Inc. and Jose Villarreal, as treasurer, violated 2 U.S.C. § 441a(f) and no reason to believe David Jackson violated 2 U.S.C. § 441a(a)(1)(A).

III. RECOMMENDATIONS

1. Find no reason to believe that Gore 2000, Inc. and Jose Villarreal, as treasurer violated 2 U.S.C. § 441a(f);
2. Find no reason to believe that David Jackson violated 2 U.S.C. § 441a(a)(1)(A);

3. Approve the appropriate letters;

4. Close the file.

Lawrence H. Norton
General Counsel

3/10/03
Date

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