

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Raymond J. Bowie) MUR 5173
Direct Marketing Finance & Escrow, Inc.)
)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that Direct Marketing Finance & Escrow, Inc. ("DMFE") and Raymond J. Bowie (collectively, "Respondents") each knowingly and willfully violated 2 U.S.C. § 441b(a). DMFE made prohibited contributions in the form of loans to the Republicans for Choice Political Action Committee ("RFC" or the "Committee") and Mr. Bowie, the president of DMFE, consented to DMFE making those prohibited contributions.

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. DMFE is incorporated in the state of Florida. At the time of the loans, DMFE was a corporation in the state of Virginia.

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2. Raymond J. Bowie is the president and only officer of DMFE. DMFE's annual corporate report, signed by Mr. Bowie and filed in Florida on May 3, 2001, lists him as the only officer or director of DMFE. Mr. Bowie has been the president, and only corporate officer, of DMFE since it was formerly incorporated in Virginia. According to DMFE's Articles of Incorporation in Virginia, Mr. Bowie was the only officer of the corporation, the only member of the board of directors, the registered agent, and the incorporator of DMFE.

3. RFC is a political committee within the meaning of 2 U.S.C. § 431(4), which maintains its headquarters in Alexandria, Virginia.

4. Ann E. W. Stone is the treasurer of RFC.

5. Ann E. W. Stone and Associates ("ASA") was an agency that performed direct mail and other services for the Committee. Ms. Stone was the president of ASA.

6. The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 (the "Act") provides that corporations are prohibited from making contributions in connection with a federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b).

7. No officer or director of a corporation shall consent to any prohibited corporate contribution or expenditure. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(e).

8. A loan made by any person for the purpose of influencing any election for federal office is a contribution and a prohibited contribution includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services or anything of value." 2 U.S.C. §§ 431(8)(A), 441b(b)(2). A loan includes a guarantee, endorsement, and any other form of security. 11 C.F.R. § 100.7(a)(1)(i). A loan which exceeds the contribution limitations shall be unlawful whether or not it is repaid. *Id.* A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 C.F.R. § 100.7(a)(1)(i)(B).

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However, a loan of money by a state bank, federally chartered depository institution or a depository institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration that is made in accordance with applicable law and in the ordinary course of business is not a contribution as long as certain conditions are met. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. § 100.7(b)(11).

9. The Act governs violations of law that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(B), (6)(C) and (d)(1). Actions that are “knowing and willful” are those that were “taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D.N.J. 1986).

10. On August 23, 1991, DMFE, RFC and ASA signed the initial “Finance and Escrow Agreement” providing that DMFE was to extend money, on behalf of RFC, to vendors providing postage, mailing, donor lists and other fundraising services. In return, the Committee was to pay 6.75% interest per month as it repaid the loan. Ann E. W. Stone signed this agreement on behalf of ASA, referred to in the agreement as the “Agency.” A handwritten clause added to the agreement limited the agency’s liability to 80% “due to federal [and] some state law.” Lara Lynn Jones signed the agreement as treasurer of the Committee, the “Client.” Repayment was to be made from an escrow account.

11. Raymond J. Bowie signed the 1991 agreement as president of DMFE. In addition to signing the bottom of the typewritten agreement, Mr. Bowie initialed several provisions and handwritten amendments to the agreement, indicating that he was actively involved in negotiating the loan agreement.

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12. From September 1991 through March 1994, DMFE expended \$1,066,413.20 (including interest) on behalf of the Committee in the form of payments to Committee vendors for postage, mailing lists, and other goods and services associated with the Committee's mail fundraising activities. Funds advanced by DMFE were used for federal and non-federal activities. DMFE spent \$398,487 for federal election activity.

13. Mr. Bowie, as DMFE's president and sole corporate officer, consented to each of these disbursements.

14. On April 23, 1993, DMFE and the Committee entered into an agreement that consolidated the loans DMFE made to the Committee. Under the terms of the new agreement, the Committee was to repay the loan to DMFE over four years at an interest rate of 54% per year.

15. Mr. Bowie signed the 1993 agreement as president of DMFE and also signed the attached "Security Agreement and Financing Statement," which provided the Committee's donor mailing lists as security.

16. Ann E. W. Stone signed this agreement and the agreements in 1994 and 1997 on behalf of the Committee; these consolidation and amendment agreements did not include ASA.

17. On September 9, 1994, DMFE and the Committee again altered the terms of the loan repayment and agreed to consolidate the accrued interest of \$144,538.18. The Committee agreed to repay the principal over five years at an interest rate of 42% per year and the accrued interest over five years at a 0% interest rate.

18. Mr. Bowie signed and initialed this agreement as DMFE's president.

19. On May 26, 1997, DMFE and the Committee signed a revised loan settlement and repayment plan, which amended all previous agreements. Under this agreement, the Committee agreed to repay the principal amount owed at an interest rate of 10% annually over ten years.

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The agreement also provided that if the Committee made payments as outlined in the amended agreement, then DMFE would "forebear (sic) upon the collection of any additional accrued interest, late charges, or other penalties having arisen under the parties' existing" agreements.

20. Mr. Bowie signed this agreement as president of DMFE.

21. DMFE's payment of funds on behalf of the Committee constituted a loan which was a corporate contribution to RFC.

22. Each re-negotiation of the loan resulted in benefits to the Committee in the form of lower interest rates and an extended use of the DMFE money.

23. Mr. Bowie was DMFE's president, an officer of the corporation, at the time the loans were made and signed all the loan agreements; thus, he consented to the prohibited contributions as an officer of DMFE.

24. Information available to respondents should have alerted them to the Committee's status as a federal political committee. The Committee's letterhead states "[t]his Republicans for Choice committee is a political action group" and lists an advisory board composed of both federal and state congressional leaders. Checks written by the Committee to DMFE during 1995 and 1996 were written on two Committee accounts, and checks from one of these accounts indicated that it was a "state fund." The memo lines of some of the checks note a percentage that mirrors the Committee's federal and non-federal allocation ratios. The clause in the 1991 agreement limiting ASA's liability to "80% max[imum] due to federal and some state law" on its face implicates the applicability of federal law.

25. DMFE was previously a respondent in Matter Under Review ("MUR") 3027, where the Commission found reason to believe that DMFE had made a similar prohibited loan to a political committee. In that matter, DMFE received a Commission letter dated February 5, 1990

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informing DMFE that the Commission found reason to believe that DMFE violated 2 U.S.C. § 441b(a) by loaning funds to a political committee. Mr. Bowie, representing DMFE, responded to the Commission's reason to believe findings and interrogatories in MUR 3027 on February 21, 1990, and filed DMFE's response brief on February 7, 1991. Although the Commission ultimately took no further action against DMFE, it sent a notification letter to Mr. Bowie, as president of DMFE, dated November 7, 1991 admonishing DMFE that "arrangements in which third party, non-banking lenders finance the activities of federal political committees appear to violate 2 U.S.C. § 441b(a). You should take immediate steps to insure that this activity does not occur in the future."

26. Respondents loaned funds to the Committee despite their knowledge that it was a federal political committee. The initial loan agreement between DMFE and the Committee was made after DMFE received notice that the Commission found reason to believe that it had violated the Act in MUR 3027 and all subsequent loan consolidations and re-negotiations between DMFE and the Committee occurred after respondents received the Commission's admonishment letter in MUR 3027.

27. Respondents never inquired about whether the Committee was a federal political committee, by asking Ms. Stone or Committee staff, checking on whether the Committee had registered or reported with the Commission, or checking state corporate filings, during the course of several loan agreements and other contacts over a period of years. Respondents never inquired about the Committee's status even after receiving the Commission's admonishment in MUR 3027 that DMFE should refrain from making loans to federal political committees. Thus, respondents deliberately ignored the Commission's admonishment in MUR 3027.

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V. 1. DMFE knowingly and willfully violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of loans to the Committee with federal portions totaling \$398,487.

2. Raymond J. Bowie knowingly and willfully violated 2 U.S.C. § 441b(a) by consenting, as an officer of DMFE, to DMFE making prohibited corporate contributions in the form of loans to the Committee totaling \$398,487.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of eleven-thousand dollars (\$11,000), pursuant to 2 U.S.C. § 437g(a)(5)(B).

2. DMFE will cease any further business and liquidate after respondents pay the civil penalty. Respondents will provide documentation to the Commission demonstrating that DMFE has liquidated.

3. Raymond J. Bowie will refrain from any future involvement in any capacity or any activity with any business entity that loans funds or otherwise finances federal political committees or direct marketing businesses whose clients are or might be federal political committees.

4. Mr. Bowie, DMFE and any corporation with which Mr. Bowie is involved in any capacity will not make prohibited contributions to any federal political committee following the date of this agreement.

VII. 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.

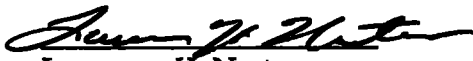
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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.


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

5/15/02
Date

FOR THE RESPONDENTS:


Raymond J. Bowie, President
Direct Marketing, Finance & Escrow

April 19, 2002
Date

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