



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

NOV 14 2003

Abraham Roth, Treasurer  
Dear 2000, Inc.  
c/o Roth & Company, LLP  
1428 36<sup>th</sup> Street, Suite 200  
Brooklyn, New York 11218

RE: MUR 5180 (Dear 2000, Inc.)

Dear Mr. Roth:

Based on a complaint filed with the Federal Election Commission on March 5, 2001, the Commission, on February 20, 2002, found that there was reason to believe that Dear 2000, Inc. ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(b)(4)(A) and 2 U.S.C. § 434(b)(5)(A). The Commission instituted an investigation of this matter and on March 21, 2003, found reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 441b(a).

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations of 2 U.S.C. § 441b(a), 2 U.S.C. § 434(b)(2)(A), 2 U.S.C. § 434(b)(8), 11 C.F.R. § 104.3(a)(3)(i), and 11 C.F.R. § 104.3(d) have occurred.

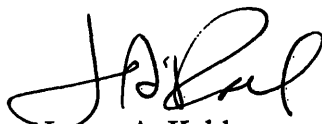
The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies, if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe the violations have occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Danita C. Lee, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Kahl", written in a cursive style.

James A. Kahl  
Deputy General Counsel

Enclosure  
Brief

244 "04" 408 "5373

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	MUR 5180
Dear 2000, Inc., and	)	
Abraham Roth, as treasurer	)	

**GENERAL COUNSEL'S BRIEF**

**I.     INTRODUCTION**

On February 20, 2002, based on a complaint filed by Ron Friedman, Chairman of Friends of Weiner, the Federal Election Commission ("Commission") found reason to believe that Dear 2000, Inc. ("Committee") and Abraham Roth, as treasurer, violated 2 U.S.C. §§ 434(b)(4)(A) and 434(b)(5)(A) by failing to disclose campaign expenditures associated with certain advertisements placed in the *Jewish Press, Inc.* ("*Jewish Press*") newspaper. On March 21, 2003, the Commission found reason to believe that the Committee accepted a prohibited contribution from the *Jewish Press* in violation of 2 U.S.C. § 441b(a) when the newspaper published several advertisements on behalf of the Committee and failed to receive payment from the Committee.

After completing its investigation in this matter, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that the Committee knowingly received a prohibited contribution from the *Jewish Press* totaling \$52,800 in violation of 2 U.S.C. § 441b(a). This Office is also prepared to recommend that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 434(b)(2)(A) and 11 C.F.R. § 104.3(a)(3)(i) by failing to report its receipt of a contribution from the *Jewish Press* or, in the alternative, that the Committee violated

2 U.S.C. § 434(b)(8) and 11 U.S.C. § 104.3(d) by failing to report the amount and nature of its *Jewish Press* debt.

## II. BACKGROUND FACTS

This matter involves the publication of over \$50,000 in campaign advertisements featuring 2000 congressional candidate Noach Dear. The advertisements were published in the *Jewish Press*, a daily newspaper with a circulation of 250,000 that is primarily distributed in Brooklyn, New York. Mr. Dear, and the Committee's campaign manager, Harris Leitstein, authorized the advertisements. The names of the advertisements, their publication dates, and costs were as follows:

	<u>Title of Advertisement</u>	<u>Publication Date</u>	<u>Cost</u>
1.	"Share Your Values"	August 18, 2000	\$ 6,600
2.	"School Vouchers"	August 25, 2000	\$ 6,600
3.	"Vote for Congress"	September 1, 2000	\$ 6,600
4.	"Dear Shares Values"	September 1, 2000	\$ 6,600
5.	"Vouchers"	September 8, 2000	\$ 6,600
6.	"Jerusalem"	September 8, 2000	\$ 6,600
7.	"Dear for Congress"	October 27, 2000	\$ 6,600
8.	"Dear for Congress"	November 3, 2000	<u>\$ 6,600</u>
			\$52,800

Although the Committee placed the advertisements and knew that the *Jewish Press* sought payment, it did not undertake any efforts to pay for the advertisements. Nor did the Committee ever formally acknowledge that it owed a debt to the *Jewish Press* or

assert that it disputed the debt by reporting it in accordance with the Commission's regulations. *See* 11 C.F.R. §§ 104.3(d) and 116.10.

### **III. ARGUMENT**

#### **A. The Committee received a prohibited contribution from the *Jewish Press***

It is unlawful for a corporation to make a contribution or expenditure, including any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value, in connection with any election to any political office. 2 U.S.C. § 441b(a). "Anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii). In-kind contributions include advertising services, services offered free of charge and services offered at less than the usual and normal charge. *Id.*; *see* 2 U.S.C. § 431(8)(i). A candidate or political committee is prohibited from knowingly accepting or receiving a prohibited contribution. 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d).

The Committee obtained from the *Jewish Press* advertising services on credit totaling \$52,800 for eight advertisements published between August 18, 2000 and November 3, 2000 and failed to pay for the services. The *Jewish Press*' display manager, Heshy Korenblit, submitted an affidavit stating that Mr. Dear contacted him about the placement of the advertisements. Korenblit Affidavit at 1. In addition, Mr. Leitstein acknowledged to a Commission investigator that he authorized the placement of the advertisements. Further, an August 23, 2000 memorandum Mr. Leitstein sent to the *Jewish Press* thanking them for the placement of certain advertisements and requesting that additional advertisements be published reveals Mr. Leitstein's involvement in

placing the advertisements. After the advertisements were published, the *Jewish Press* attempted to collect its advertising costs by sending invoices to and telephoning the Committee. Committee staff and Mr. Dear assured the newspaper that it would be paid. Greenwald Affidavit at 4 (Apr. 30, 2003) and Greenwald Affidavit at 4 (Jun. 5, 2003). However, the Committee never paid the *Jewish Press* and it did not undertake any efforts such as fundraising, reducing overhead and administrative costs or liquidating assets, to satisfy the debt. See 11 C.F.R. § 116.4(c)(2). As a result, the Committee knowingly received a prohibited contribution totaling \$52,800 in advertising services from the *Jewish Press* in violation of 2 U.S.C. § 441b(a).

The Committee maintained throughout the Commission's investigation that its treasurer, Abraham Roth, did not authorize placement of the advertisements. It asserted, therefore, that it did not have any obligations to the *Jewish Press* and did not commit any violation for its failure to pay despite Mr. Leitstein's and Mr. Dear's roles in ordering the advertisements. However, the Committee was obligated to pay for the advertisements because campaign manager Leitstein and candidate Dear were agents of the Committee. 11 C.F.R. § 109.1(b)(5). Mr. Leitstein and Mr. Dear held positions within the campaign organization where it reasonably appeared to the *Jewish Press* that in the ordinary course of campaign-related activities they could authorize expenditures.<sup>1</sup> *Id.* Thus, when the advertisements were published, the Committee had a duty to pay the *Jewish Press*.

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<sup>1</sup> In addition, Committee treasurer, Abraham Roth's deposition testimony demonstrates that he also gave Mr. Leitstein and Mr. Dear the authority to place advertisements on behalf of the Committee. In response to a deposition question focusing on who asked Mr. Roth to issue checks to local New York newspapers to pay for the Committee's campaign advertising debts, Mr. Roth testified, "It didn't work that way. I would get an invoice from the newspaper. I would ask a number of people was this ad placed, did it run, and if I was told yes, I would pay for it." Roth deposition at p. 84.

As a corporate entity, the *Jewish Press* is prohibited from making contributions in connection with federal elections, and it is unlawful for a candidate or political committee to knowingly accept or receive a prohibited contribution. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). Accordingly, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that Dear 2000, Inc. and Abraham Roth, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b) by knowingly receiving a prohibited contribution from the *Jewish Press* totaling \$52,800 for the unpaid advertisements.

**B. The Committee failed to report its *Jewish Press* transaction**

The Committee's *Jewish Press* transaction should have been disclosed as either a contribution in accordance with 2 U.S.C. § 434(b)(2)(A) or a debt in accordance with 2 U.S.C. § 434(b)(8). The Committee failed to do either.

The Committee received advertising services from the *Jewish Press* and such services constitute an in-kind contribution. 11 C.F.R. § 100.7(a)(1)(iii). Since contributions must be disclosed, 2 U.S.C. § 434(b)(2)(A) and 11 C.F.R. § 104.3(a)(3)(i), the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that Dear 2000, Inc. and Abraham Roth, as treasurer, violated 2 U.S.C. § 434(b)(2)(A) and 11 C.F.R. § 104.3(a)(3)(i) for failure to report its receipt of a contribution from the *Jewish Press* valued at \$52,800.

In the alternative, a political committee must disclose the amount and nature of outstanding debts and obligations owed by the reporting committee. 11 C.F.R. § 104.3(d). A political committee shall report a disputed debt in accordance with

11 C.F.R. 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. 11 C.F.R. § 116.10. Until the dispute is resolved, the political committee shall disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. *Id.*

The Committee did not pay for the advertisements, nor disclose the amount and nature of its newspaper debt allegedly because it did not receive the *Jewish Press*' invoices and was not aware of the debt. The Committee therefore asserts that it did not violate the Act or the Commission's regulations. However, our investigation revealed that the *Jewish Press* sent invoices for the advertisements to the Committee's address at 4702 16<sup>th</sup> Avenue, Brooklyn, New York 11204. The *Jewish Press* believed this to be the address of the Committee's campaign headquarters because letterhead stationary used by campaign manager Leitstein in his correspondence to the newspaper said "Dear for Congress 2000/Dear 2000" and listed the 16<sup>th</sup> Avenue address. In addition, Committee treasurer Abraham Roth met with the *Jewish Press*' chief executive officer, Jerry Greenwald, and attorney, Dennis Rapps, to discuss the advertisements, the invoices, and the debt. Thus, the Committee either knew of or received the invoices, was aware that the *Jewish Press* was seeking payment for the advertisements, did not pay for the advertisements, and did not disclose its newspaper debt. Accordingly, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that Dear 2000, Inc. and Abraham Roth, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.3(d) for failure to report the amount and nature of its *Jewish Press* debt.




#### IV. GENERAL COUNSEL'S RECOMMENDATIONS


1. Find probable cause to believe that Dear 2000, Inc. and Abraham Roth, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by knowingly receiving prohibited contributions from the *Jewish Press, Inc.*
2. Find probable cause to believe that Dear 2000, Inc. and Abraham Roth, as treasurer, violated 2 U.S.C. § 434(b)(2)(A) and 11 C.F.R. § 104.3(a)(3)(i) for failure to report its receipt of a contribution from the *Jewish Press, Inc.*
3. Find probable cause to believe that Dear 2000, Inc. and Abraham Roth, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.3(d) for failure to report the amount and nature of its *Jewish Press, Inc.* debt.


Lawrence H. Norton  
General Counsel

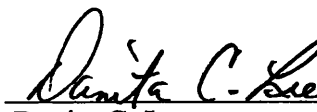
11/13/03  
Date

BY:

  
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