



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 12, 2003

BY HAND DELIVERY

Arthur L. Speck, Jr., Registered Agent
Precision List, Inc.
5653 Columbia Pike
Unit 201
Falls Church, VA 22041

RE: MUR 5181
Precision List, Inc.

Dear Mr. Speck:

On February 11, 2003, the Federal Election Commission found that there is reason to believe Precision List, Inc. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, 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. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted within 21 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, 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.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause

conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

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 demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mary L. Taksar or Mark Allen, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Order and Subpoena

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Precision List, Inc. ("PLI")

MUR: 5181

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. RELEVANT LAW

It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a). It is also unlawful for any officer or director of a corporation to consent to any corporate expenditures which may constitute prohibited contributions to candidates or committees. *Id.* For purposes of Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan (other than from a national or State bank made in accordance with the applicable banking laws and regulations in the ordinary course of business), 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). "Anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A). For purposes of 11 C.F.R. § 100.7(a)(1)(iii)(A), "usual and normal charge" for

goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution.¹ 11 C.F.R. § 100.7(a)(1)(iii)(B). The regulations specifically include mailing lists as an example of such goods or services. *Id.* See also 11 C.F.R. § 100.8(a)(1)(iv)(A).² The entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution.³ 11 C.F.R. § 100.7(a)(2).

The Commission recently considered the issue of whether the rental of a mailing list results in a contribution in Advisory Opinion 2002-14, involving the Libertarian National Committee, Inc. (“LNC”). The Commission stated that “[w]hether the LNC may lease the list to others for payment depends upon the nature of the list development and use, and on the nature of the lease transaction.” Advisory Opinion 2002-14; *see also* Advisory Opinion 1989-4, 1986-14 and 1981-53 (isolated sales of committee assets without inherent contribution consequences were permitted in circumstances where the assets had been purchased or developed for the committee’s own particular use rather than for sale in fundraising activity and such assets had ascertainable market value). Under the factual circumstances presented by the requestor (i.e., the committee developed the mailing list over a period of time primarily for its own political or campaign use and the lease of the list was only a small percentage of its overall use by the committee), the Commission determined that the LNC “may lease its mailing list to any person...without a contribution resulting if the following conditions are met. First, the list, or leased portion thereof, must have an ascertainable fair market value. Second, the list must be

¹ Part 100 of the Commission’s regulations were renumbered last year. As a result of the renumbering, Sections 100.7(a)(1)(iii)(A) and (B) now appear in Sections 100.52(d)(1) and (2).

² Section 100.8(a)(1)(iv)(A) now appears at Section 100.111(e)(1).

³ Section 100.7(a)(2) now appears at Section 100.53.

leased at the usual and normal charge in a bona fide, arm's[-]length transaction, and the list must be used in a commercially reasonable manner consistent with such an arms-length agreement."

Advisory Opinion 2002-14. The Commission also stated that given these facts, the LNC may exchange its mailing lists or portions of its mailing lists with any outside organizations, including for-profit corporations and labor organizations, provided that the lists or portions of the lists that are exchanged are of equal value.

2. Analysis

This matter involves a mailing list that was developed by the Spirit of America PAC and later licensed to Ashcroft 2000 for its own use, including the right to sell, transfer, assign, license or sub-license the list to other parties. Based on information in the Commission's possession, it appears that Ashcroft 2000 may have rented, licensed or sub-licensed the list to Precision List, Inc. ("PLI"). PLI was incorporated in Virginia in 1997 and apparently acts as a list manager and is involved in transactions related to rental, licensing or sub-licensing of mailing lists. PLI appears to work closely with Precision Marketing, Inc. ("PMI") and apparently is a wholly-owned subsidiary of PMI.

Ashcroft 2000 disclosure reports disclose receipts received in 2000 from PMI. The Committee discloses an August 7, 2000, receipt of \$8,882.96 from PMI for "rental" in its 2000 October Quarterly Report. However, PMI has indicated that it never rented a mailing list from Ashcroft 2000, nor did PMI ever license or sublicense any Ashcroft mailing list. PMI further states that it did not make \$116,922 in payments to Ashcroft 2000 during calendar year 2000 as was reported by Ashcroft 2000 in its disclosure reports, but instead made \$52,092.92 in payments to the Committee in relation to an agreement between PMI and Ashcroft 2000 for an

Assignment of Accounts Receivable. According to PMI, the discrepancy between the amount of payments reported by Ashcroft 2000 as having been received from PMI and the amount of payments PMI indicates that it paid Ashcroft 2000 can be explained by a reporting error on the part of the Committee.

If PMI did not make the payments, it raises the question of what entity made the payments in question to Ashcroft 2000 and why the payments were reported as having been made by PMI. Because the information we have obtained thus far indicates that PLI is the entity more centrally involved with the mailing list and transactions regarding the list, it appears likely that these payments were made by PLI but reported by Ashcroft 2000 as payments received from PMI. Although PLI and PMI are set up as two separate corporate entities, as noted earlier, PLI is apparently a wholly-owned subsidiary of PMI and the two entities work closely together.

Documents in the Commission's possession indicate continual and ongoing interactions between PLI and PMI. For example, documents indicate that Rosann Garber, President of PLI and list manager, and Arthur Speck, President of PMI, were in frequent contact via e-mail and written memoranda regarding the list. Further support of the close nexus between PMI and PLI is found in documents that indicate PMI and PLI operate out of the same building in Falls Church, Virginia; PMI apparently is located in suite 200 and PLI is apparently located in suite 201 of the building. Also, Arthur Speck is the registered agent for both PMI and PLI.

In addition, documents in the Commission's possession suggest a close nexus between PLI and PMI in the area of financial transactions, including the possible commingling of funds between PLI and PMI accounts. For example, two checks drawn on an operating account of vendor Omega List Company made payable to "Precision List Co." in the amounts of \$18,539.38

and \$10,000, which apparently were related to list royalties, were deposited into an account belonging to PMI on April 3, 2000, rather than being deposited into a PLI account.

The Commission further notes that receipts of list rental income from PLI and other organizations are disclosed in Spirit of America PAC's 1999 disclosure reports. The lack of receipts from PLI on Ashcroft 2000 disclosure reports also suggests that a portion of the receipts that the Committee reported as having received from PMI, and that PMI indicates it never made to Ashcroft 2000, were payments made to Ashcroft 2000 by PLI related to the rental, licensing or sub-licensing of the list or a portion of it.

In light of the close nexus between PLI and PMI, financial information in the Commission's possession, and the lack of receipts from PLI on Ashcroft 2000 disclosure reports, it appears that payments Ashcroft 2000 reported as having received from PMI may actually reflect payments received from PLI. If the mailing list was not developed by Ashcroft 2000 for its own use, any rental, licensing or sub-licensing of the list by Ashcroft 2000 to PLI may have resulted in the making of a corporate contribution. See 2 U.S.C. § 441b(a). Consequently, there is reason to believe that Precision List, Inc. violated 2 U.S.C. § 441b(a).