

BEFORE THE FEDERAL ELECTION COMMISSION

**In the Matter of the National
Republican Congressional Committee**

MUR 5197

2003 JUL 28 P 4: 39

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**NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE'S
MOTION TO DISMISS AND TO RECONSIDER AND
VACATE FINDING OF REASON TO BELIEVE**

By and through the undersigned counsel, the National Republican Congressional Committee hereby moves that the Commission reconsider and vacate its finding of reason to believe, and dismiss the complaint in the above-captioned Matter Under Review.

I. INTRODUCTION

On June 11, 2003, the Commission held a public hearing on its enforcement procedures. The Commission requested and received from several witnesses a candid assessment of its procedures and practices. While the Commission was publicly receptive to concepts like due process and increased openness and efficiency, it is now clear that not much has changed. The day before its June 11 hearing, the Commission voted to find reason to believe in this matter.

According to the Factual and Legal Analysis, the finding was based upon a complaint filed with the Commission on April 16, 2001. Yet, the contribution that is now at issue was made over one year after the complaint was filed, and over one year after the NRCC filed its response. If the Commission would have followed its own regulations and afforded the NRCC a chance to respond to this accusation, it would have learned that

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COMMISSION
OFFICE OF GENERAL
COUNSEL**

9620-204-40-42

the contribution was deposited into the NRCC's Building Fund on May 30, 2002. Thus, the finding of reason to believe is wholly unjustified.

II. ARGUMENT

A. Contrary to its Regulations, the Commission Failed to Give the NRCC an Opportunity to Respond.

Commission regulations require that a respondent be given an opportunity to respond, and prohibit the Commission from taking any action absent an opportunity to be heard:

(a) A respondent **shall** be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

(b) The Commission shall **not** take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the fifteen (15) day period specified in 11 C.F.R. § 111.6(a).

11 C.F.R. § 111.6 (emphasis added).

Despite these very clear regulations, the NRCC has never been afforded the opportunity to respond to the matter that now forms the basis for the Commission's reason to believe finding. The complaint was filed on or about April 16, 2001, and as noted in the Factual and Legal Analysis, the NRCC filed a response. Included in that response was an affidavit from its then-treasurer that confirmed that "each and every donation to the NRCC cited in the complaint in this MUR was placed in the NRCC building fund . . ."¹ Neither the Factual and Legal Analysis nor the Commission's

¹Despite that the affidavit states it is limited to donations "cited in the complaint," the Factual and Legal Analysis' states "[t]he response and affidavit of Respondents addressed all donations from Freddie Mac and Fannie Mae, not just the donations referenced in the complaint . . ." Using this error, the Factual and Legal Analysis then references the May 30, 2002 donation, stating "[t]here is no information in hand" regarding this contribution, and then proclaims "there is a reason to believe."

proposed conciliation agreement take issue with any of the donations that were cited in the original complaint and that were addressed in the initial response and affidavit. Instead, the Commission now cites a donation made over a year after the complaint was filed and the response submitted.

Because the NRCC has not yet had an opportunity to address this donation, the Commission is prohibited by its own regulations from taking any action on the matter. Nor can the Commission avoid this error by hiding behind 11 C.F.R. § 111.8, and claim that this is an internally generated matter. Both the Factual and Legal Analysis and the proposed conciliation claim that the matter was generated by the complaint. Thus, the NRCC is entitled to the protections afforded by 11 C.F.R. § 111.6. Because the Commission failed to afford the NRCC those protections, its reason to believe finding is contrary to law.

B. If the Commission Would Have Afforded the NRCC an Opportunity to Respond, It Would Have Learned that the Donation at Issue Was Deposited Into the Building Fund.

Establishing that the May 30, 2002 donation at issue was deposited into the building fund is a simple matter. The Fannie Mae check itself is made payable to the "Committee Building Fund."² Moreover, NRCC deposit records indicate that the funds were in fact deposited into the building fund. The current NRCC treasurer, Chris Ward, has authenticated these documents by affidavit (attached). Moreover, although the initial July 2002 Quarterly Report of the NRCC did not specify that this donation went into the

² Of course, the NRCC long-standing practice and understanding is that any and all checks from Fannie Mae and Freddie Mac were to be deposited only in the committee's building fund. This practice and understanding is based upon those entities' long-standing specific designations of their donations to the building funds and insistence that their donations only go into the building funds.

building fund, the NRCC has since amended its reports and made clear that it was deposited into the building fund. Thus, there is no violation of the law, and the matter ought to be dismissed.

III. CONCLUSION

For the foregoing reasons, the National Republican Congressional Committee respectfully requests that the matter be dismissed, and that the Commission reconsider and vacate its finding of reason to believe.

Respectfully submitted,



Donald F. McGahn II

General Counsel
NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE
320 First Street, SE
Washington, DC 20003
(202) 479-7069

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 5197

1. My name is Christopher J. Ward, and I am the Controller and Treasurer for the National Republican Congressional Committee ("NRCC").
2. I have been Controller at the NRCC for seven years, and I have recently been named Treasurer. Before Controller, I was Accounts Receivable Manager for the NRCC for one year. Prior to this position, I served as Controller and Director of Administration for the Republican House-Senate Dinner Committees for five years. I have been performing the accounting for the annual Republican House-Senate Dinner Committees since 1991 and for the NRCC since 1995.
3. As long as I have been accounting for donations and contributions at the NRCC, and for some time previous, it was the committee's practice and understanding that any and all checks from Fannie Mae, Freddie Mac, and Sallie Mae were to be deposited only in the committees' building funds. This practice and understanding was based upon those entities' long-standing specific designations of their donations to the building funds and insistence that their donations go only to the building funds.
4. As a matter of practice, the NRCC internally labeled all of their corporate donations, including donations to their building funds, as "Trust" donations.
5. The \$25,000 donation by Fannie Mae payable to the NRCC Building Fund, by check dated May 30, 2002, was deposited into the NRCC's Building Fund. I have attached hereto copies of the Building Fund deposit slip (to account ending in "4186") and the NRCC's internal records noting the deposit on May 31, 2002. The initial July 2002 Quarterly Report of the NRCC did not specify that this donation from Fannie Mae was deposited into the NRCC Building Fund. Amendments to this Report filed on July 18, 2003 make clear that this donation was deposited into the NRCC Building Fund. See Amendment page 13,016 found at <http://herndon1.sdrdc.com/cgi-bin/fecimg/?C00002931>.


Christopher J. Ward

Sworn and subscribed to before me this 27th day of July, 2003.



My Commission expires July 31, 2007

HANNAH B. THRUSH
NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JULY 31, 2007

24-04-407-0300

24-04-407-0301

DEPOSIT TICKET

NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE

DATE

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL
ENDORSE & LIST CHECKS SEPARATELY OR
ATTACH LIST

CURRENCY	DOLLARS	CENTS
COIN		
TOTAL CASH		
CHECKS		
King, J. L.	25.00	-
King, J. L.	10.00	-
King, J. L.	25.00	-
TOTAL FROM ATTACHED LIST		

CHECKS AND OTHER ITEMS ARE RECEIVED
FOR DEPOSIT SUBJECT TO THE PROVISIONS
OF THE UNIFORM COMMERCIAL CODE AND
ANY APPLICABLE COLLECTION AGREEMENT.

DEPOSIT TICKET

NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE

DATE

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TOTAL FROM ATTACHED LIST		

CHECKS AND OTHER ITEMS ARE RECEIVED
FOR DEPOSIT SUBJECT TO THE PROVISIONS
OF THE UNIFORM COMMERCIAL CODE AND
ANY APPLICABLE COLLECTION AGREEMENT.

DONOR/DONATION RECORD

Account Number	
Name	
Company/PAC	Fannie Mae
Address 1	
Address 2	
City, State, Zip	
Telephone	
Occupation	
Employer	

CTYPE	I = Individual	M = Federal PAC	<input checked="" type="radio"/> O = Corp, Assn, Other
Flag Codes	L = Major Donor		

Batch No	2			
Date	5/30/02			
Amount	25,000.			
Source Code	02MIC			
History Flag	N = Individual	<input checked="" type="radio"/> C = Corp, Other	P = PAC	
History Flag	N = No data	F = Female	M = Male	B = Both
History Flag	N = Federal	M = Memo Entry	<input checked="" type="radio"/> T = Trust	

FannieMae

3900 Wisconsin Avenue, NW
Washington, DC 20016-2899

Date 04/29/02

Pay ****TWENTY-FIVE THOUSAND AND XX / 100 DOLLAR****

Amount
25,000.00***

64-1278

0007415260

611
Bank of America
Bank of America Customer Connection
Bank of America of Georgia, N.A.
Atlanta, DeKalb County, Georgia
Member Federal Deposit Insurance Corporation

PAYER
NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE BUILDING FUND
320 FIRST STREET SE
WASHINGTON, DC 20003

CHECKS OVER \$10,000.00 REQUIRE COUNTERSIGNATURE
VOID SIX MONTHS FROM ISSUE DATE
FANNIEMAE

Timothy
Executive Vice President and Chief Financial Officer
Senior Vice President and Treasurer

24-04-407-0302