

23.04.406.0955

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 5238

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Gretchen Burke

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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 reason to believe that Gretchen Burke ("Respondent"), violated 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Respondent Gretchen Burke, is an individual contributor. Schumer '98 (the "Committee") is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office

which, in the aggregate, exceed \$1,000. Commission regulations require that for a contribution to be designated in writing for a particular election, a contribution check itself or an accompanying writing signed by the contributor must clearly indicate the particular election with respect to which the contribution is made. 11 C.F.R. § 110.1(b)(4). In the absence of such a designation, the contribution will be considered to be for the next election after the contribution is made. 11 C.F.R. § 110.1(b)(2)(ii). Commission regulations also require that any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. 11 C.F.R. § 110.1(k)(1).

3. Respondent contributed \$5,100 to Schumer '98 with regard to the 1998 general election. The contribution was made in two parts: a \$100 contribution received by the Committee on May 28, 1998 and a \$5,000 contribution made with check number 3191, which the Committee reported as received on October 29, 1998. The \$5,000 check was drawn on a joint checking account shared by Respondent and her husband, but was signed only by Respondent. Respondent did not designate the \$5,000 contribution. Pursuant to 11 C.F.R. § 110.1(b)(4) and (b)(2)(ii), the entire \$5,000 contribution was attributed to Respondent for the next election in time and, with the prior \$100 contribution, caused Respondent to exceed the applicable contribution limitation by a total of \$4,100.

4. This contribution was not refunded, reattributed, or redesignated.

5. Respondent contends that she did not intend to make an excessive contribution to the Committee or to violate the Federal Election Campaign Act. She contends that she was invited to a fundraising dinner for the Committee, the price of admission for which was listed as \$5,000. Respondent contends that she relied on the Committee personnel at the fundraising dinner to ensure that her contribution was within contribution limits.

23-04-406-0956

6. The Committee failed to request that Respondent provide the treasurer with a signed written redesignation of the contribution within 60 days of the treasurer's receipt of the contribution, 11 C.F.R. § 110.1(b)(5)(ii)(B), or request that Respondent provide it with a signed written reattribution of the contribution within 60 days, 11 C.F.R. § 110.1(k)(3). Committees are required to refund within 60 days, or secure redesignations/reattributions within 60 days, of contributions which on their face exceed the Federal Election Campaign Act's contribution limitations. 11 C.F.R. §§ 103.3(b)(3); 110.1(b)(2) and 110.1(k)(3). If the Committee had sought and received a reattribution and redesignation that complied with the requirements of 11 C.F.R. § 110.1, Respondent's contribution would have been considered to be within the limit stated at 2 U.S.C. § 441a(a)(1)(A).

V. Respondent contributed \$4,100 to Schumer '98 in excessive contributions in violation of 2 U.S.C. § 441a(a)(1)(A). Respondent will cease and desist from violating 2 U.S.C. § 441a(a)(1)(A).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of \$1,800, pursuant to 2 U.S.C. § 437g(a)(5)(A).

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.

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.

23-04-406-0957

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements 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

BY:


Gregory R. Baker
Acting Associate General Counsel

8/13/02
Date

FOR THE RESPONDENT:


Gretchen Burke

6/1/02
Date

23.04.406.0958