BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Schumer '98	)	MUR 5238
and Steven D. Goldenkranz, as treasurer	)	
	)	

CONCILIATION AGREEMENT

MUR 5238 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 Schumer'98 and Steven D. Goldenkranz, as Treasurer ("Respondents"), violated 2 U.S.C. § 441a(f), 2 U.S.C. § 434(a)(6)(A), 2 U.S.C. § 434(b) and 11 C.F.R. § 110.9(a).

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 and violations of law in this matter are as follows:

1. Schumer '98 (the "Committee") was the principal campaign committee of Charles E. Schumer for his campaign for the Democratic nomination for the United States Senate (New York) in the 1998 primary and general elections.

2. Steven D. Goldenkranz is the treasurer for Schumer '98.

Excessive Contributions

3. Under applicable statutory provisions, no person shall make contributions to any candidate and his authorized political committees with regard to any election for Federal office that, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A); and no multicandidate political committee shall make contributions to any candidate and his authorized political committees with regard to any election for Federal office that, in the aggregate, exceed $5,000. 2 U.S.C. § 441a(a)(2)(A).[1] No candidate or political committee shall knowingly accept any contribution in violation of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f). No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitation imposed on contributions under 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

4. Under regulations applicable for the 1998 elections,[2] a contributor could designate his contribution for a particular election by writing that election on the face of the check. 11 C.F.R. § 110.1(b)(4)(i). Alternatively, a contributor could designate his contribution by providing a signed written statement which identified the election for which the contribution was intended. 11 C.F.R. § 110.1(b)(4)(ii).

5. Under regulations applicable for the 1998 elections, contributions which on their face exceed the applicable contribution limitations and contributions which do not appear to be excessive on their face, but which exceed those limits when aggregated with other contributions from the same contributor, could be either deposited into a campaign depository

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[1] Section 102 and 307 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. 107-155, amended section 441a to increase contribution limitations to $2,000 per election to Federal candidates.

[2] On October 31, 2002, the Commission adopted new regulations for designating contributions to particular elections and attributing contributions to particular donors. Under the new regulations, a candidate's authorized committee is not required to obtain a written contribution redesignation or reattribution signed by the contributor. An authorized committee may redesignate or reattribute the contribution and send a notification of the redesignation or reattribution to the contributor pursuant to 11 C.F.R. §§110.1(b)(5) and (k)(3).

under 11 C.F.R. § 103.3(a) or returned to the contributor. 11 C.F.R. § 103.3(b)(3). Under applicable regulations, if any such contribution was deposited, the treasurer was required to request redesignation or reattribution of the contribution by the contributor in accordance with 11 C.F.R. § 110.1(b) or § 110.1(k), as appropriate. 11 C.F.R. § 103.3(b)(3). If a redesignation or reattribution was not obtained, the treasurer was required, within 60 days of the treasurer's receipt of the contribution, to refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

6. Under regulations applicable for the 1998 elections, if a political committee did not retain the written records concerning designation required under 11 C.F.R. § 110.1(*l*)(2), the contribution was not considered to be designated in writing for a particular election, and the provisions of 11 C.F.R. § 110.1(b)(2)(ii) applied. 11 C.F.R. § 110.1(*l*)(5). If a contribution was not designated in writing by the contributor for a particular election, it was considered designated for the next election for that Federal office after the contribution was made. 11 C.F.R. § 110.1(b)(2)(ii). Under the applicable regulations, if a political committee did not retain the written records concerning redesignation or reattribution required under 11 C.F.R. § 110.1(1), (2), (3) or (6), the redesignation or reattribution was not effective, and the original designation or attribution controlled. 11 C.F.R. § 110.1(*l*)(5).

7. The Commission found that the Committee accepted approximately 765 contributions from 720 individuals, 36 partnerships and 9 political committees for which the Committee could not produce documentation of written reattributions or redesignations, and the Commission, therefore, found exceeded the applicable contribution limitation in 2 U.S.C. § 441a(a)(1)(A) or 2 U.S.C. § 441a(a)(2)(A) by a total of approximately $915,000. The Committee did not reattribute or redesignate the contributions as permitted by 11 C.F.R. § 110.1(b)(5)(ii)(B) or § 110.1(k)(3)(ii)(B); nor did the Committee refund the contributions as

permitted by 11 C.F.R. § 103.3(b)(3). The Commission found that of the approximately 765 contributions, 18 consisted of checks that bore designations written by someone other than the contributor and, therefore, were not designated by the contributors in accordance with 11 C.F.R. § 110.1(b)(4)(i).

8. The Committee contends that nearly all of the 765 contributions were in amounts between $1,000 and $2,000 and, therefore, were within the $2,000 that individuals could contribute to a candidate for a primary and general election (the primary and general elections were separate elections, with separate $1,000 limits); and the Commission would not have found them to be excessive had the Committee obtained and retained the reattribution and redesignation documentation required under the Commission regulations applicable for the 1998 elections.

Forty-Eight Hour Violations

9. The principal campaign committee of a candidate shall notify the Secretary of the Senate or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A). This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. 2 U.S.C. § 434(a)(6)(A). The Committee was thus required to report contributions it received between August 27, 1998 and September 12, 1998 and between October 15, 1998 and October 31, 1998.

10. The Commission identified 1,407 contributions totaling $1,354,500 that

required 48-hour notices during the 1998 primary and general elections. 2 U.S.C. § 434(a)(6)(A). Of these 1,407 contributions, the Commission found that the Committee failed to file 48-hour notices on 57 contributions totaling $89,500. An additional 180 notices for contributions totaling $186,500 were filed late.

Joint Fundraising Violations

11. The participating committees in a joint fundraising activity may establish a separate political committee to act as the fundraising representative for all participants. 11 C.F.R. § 102.17(a)(1)(i). This separate committee shall be a reporting political committee and shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant. 11 C.F.R. § 102.17(b)(1).

12. The participants in a joint fundraising activity shall enter into a written agreement. 11 C.F.R. § 102.17(c)(1). The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. *Id.* The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. *Id.* In addition, the fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. 11 C.F.R. § 102.17(c)(6).

13. After gross contributions are allocated among participants, the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. 11 C.F.R. § 102.17(c)(7)(i)(A) To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds. *Id.* After the distribution of net proceeds, each political committee participating in a joint

fundraising activity shall report its share of net proceeds received as a transfer-in from the fundraising representative. 11 C.F.R. § 102.17(c)(8)(i)(B). Finally, each participating political committee shall also file a report of its receipts and disbursements itemizing its share of gross receipts as contributions from the original contributors to the extent required by 11 C.F.R. § 104.3(a). 11 C.F.R. § 102.17(c)(8)(i)(B); *see also* 2 U.S.C. § 434(b).

14. A contribution is a gift, subscription, loan advance, deposit of money, or anything of value made by a person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1).

15. The Commission found that the Committee participated in joint fundraising activity with the Liberal Party of New York. Win New York served as the joint fundraising representative. According to the Joint Fundraising Agreement, expenses and proceeds were allocated in the following manner: 24.33% to the Committee and 75.67% to the Liberal Party of New York. Win New York filed reports showing total operating expenditures of $4,473. The Committee's share of the expenses should have been 24.33% of $4,473 or $1,088. The Committee actually covered $4,253 or 95% of the expenses by making in-kind contributions to the joint fundraiser. The Committee reported receiving $176,850 in net proceeds and $179,350 in gross proceeds, making it appear as though its share of joint fundraising expenses was $2,500 ($179,350 - $176,850). The Liberal Party's share of the expenses should have been 75.67% of the $4,473, or $3,385. It, however, reported gross proceeds equal to net proceeds, indicating that it paid none of the joint fundraiser operating expenses.

16. The Committee misreported its joint fundraising expenses. It should have reported expenses of $1,088. It actually reported expenses of $2,500. The Committee's report thus overstated its joint fundraising expenses by $1,412

17. The Committee also made a contribution to the Liberal Party and failed to report it. The Liberal Party of New York should have been assessed $3,385 as its portion of the joint fundraising expenses. It paid none of the joint fundraising expenses. Virtually all of those expenses were covered by the Committee in the form of in-kind contributions. The Committee's in-kind contributions thus constituted a contribution to the Liberal Party of New York that should have been reported. *See* 2 U.S.C. § 434(b).

V. The Respondents accepted excessive contributions in the amount of approximately $915,000 in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a), because they were not designated or reattributed pursuant to the applicable regulations.

VI. The Respondents failed to file 48 hour notices for 57 contributions totaling $89,500 and filed 48 hour notices late for 180 contributions totaling $186,500 in violation of 2 U.S.C. § 434(a)(6)(A).

VII. The Respondents paid for more than their share of joint fundraiser expenses resulting in the misreporting of joint fundraiser expenses by $1,412 and failed to report a $3,385 in-kind contribution to the Liberal Party of New York in connection with the joint fundraiser in violation of 2 U.S.C. § 434(b).

VIII. The Commission does not allege and there is no finding that U.S. Senator Charles Schumer engaged in any wrongdoing in connection with the findings in this Agreement.

IX. The Commission does not allege and there is no finding that the Committee accepted contributions from prohibited sources, such as corporations, government contractors or foreign nationals, in violation of 2 U.S.C. §§ 441b, 441c, or 441e.

X. The Respondents will pay a civil penalty to the Federal Election Commission in the amount of $130,000.00.

XI. The Respondents will refund a portion of the contribution amount from 77 individual donors and 2 partnerships, totaling $129,455. The Respondents will provide the Commission with copies of the front and back of negotiated refund checks within 90 days from the date this Agreement becomes effective.

XII. The Respondents will cease and desist from further violation of 2 U.S.C. § 441a(f), 11 C.F.R. § 110.9(a), 2 U.S.C. § 434(a)(6)(A) and 2 U.S.C. § 434(b).

XIII. 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 initiate a civil action for relief in the United States District Court for the District of Columbia.

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

XV. Except as specified in Paragraph IX., Respondents 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.

XVI. 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: _____ 3/14/03
Gregory R. Baker
Acting Associate General Counsel
Date

FOR THE RESPONDENTS:

_____ 2/14/03
Lyn Utrecht
Counsel, Schumer '98
Date