



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

VIA FACSIMILE (202) 434-1690 AND FIRST CLASS MAIL

Judith L. Corley, Esquire
Perkins Coie
607 14th Street, NW, 8th Floor
Washington, DC 20463

DEC 6 2004

RE: MUR 5262
Tim Ryan,
Tim Ryan for Congress and
Michael Fraioli, Treasurer

Dear Ms. Corley:

On November 24, 2004, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Margaret J. Toalson".

Margaret J. Toalson
Attorney

Enclosure
Conciliation Agreement

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Tim Ryan
Tim Ryan for Congress and
Michael Fraioli, Treasurer

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CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Donald L. Walter and a separate complaint by Randy D. Walter, and based on information ascertained by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. §§ 437g(a)(1) and 437g(a)(2). The Federal Election Commission ("Commission") found reason to believe that Tim Ryan, Tim Ryan for Congress and Michael Fraioli, as treasurer (collectively "Respondents"), violated 2 U.S.C. § 441a(f).

NOW, THEREFORE, the Commission and Respondents, 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 Respondents 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. 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 in this matter are as follows:

Actors

1. Tim Ryan was a candidate for the 17th Congressional District in Ohio in the 2002 election cycle.

2. Tim Ryan for Congress is an authorized committee within the meaning of 2 U.S.C. § 431(4).

3. Michael Fraioli is the treasurer of Tim Ryan for Congress.

4. Dennis Rossi is a high school athletic coach, businessman, friend and mentor to Tim Ryan.

5. Shawn Pompelia, a lending officer at the Second National Bank, approved the candidate loan for \$50,350. Mr. Pompelia played athletics under Mr. Rossi, at the same high school in which Mr. Ryan attended and participated in athletics. Additionally, Mr. Pompelia, Mr. Rossi and Mr. Ryan all coached athletics at the same time at that same high school.

Applicable Law

6. The Act prohibits an individual from making a contribution to any candidate greater than \$1000 per election. 2 U.S.C. § 441a(a).¹ A loan is a contribution by each endorser or guarantor. Unless a written agreement states otherwise, when there are multiple guarantors of a loan, as in this matter, each guarantor of the loan is deemed to have made a contribution in the same proportion to the unpaid balance that each endorser bears to the total number of endorsers, or in this matter, \$25,175. 11 C.F.R. § 100.7(a)(1)(C). Thus, for the purposes of the Act, such a loan is treated as if it were made directly from the bank to the committee, and the candidate is

¹ This matter pertains to a 2002 Congressional election in the 17th Congressional District of Ohio. All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

treated as a guarantor of the loan. Even if the loan is paid off, the loan is still an unlawful contribution if it exceeds the contribution limits of 2 U.S.C. § 441a(a). No candidate or political committee shall knowingly accept a contribution in violation of the statute. 2 U.S.C. § 441a(f). When a candidate receives a loan for use in his campaign, he receives the loan as an agent of his committee. 2 U.S.C. § 432(e)(2).

Factual Background

7 Mr. Ryan was a first-time candidate for federal office during the campaign for the United States Congress in 2002. In an open seat race, Mr. Ryan was competing against five other primary election candidates for the nomination of his party. Mr. Ryan determined that he needed money for his campaign, and decided to inquire about taking out a loan. Mr. Ryan met with Shawn Pompelia from the Second National Bank to apply for a loan. The Bank agreed to approve a loan if it was cosigned. Around the same time, Respondents contend that a campaign staffer spoke with someone at the Commission, possibly in the Information Division, for information on loans to candidate committees. While the staffer does not recall exactly her conversation with the Commission, and does not know, therefore, whether she received information on loan guarantees from the Commission, Respondents contend that she did believe that a loan guarantee was permitted under the federal campaign laws and she relayed that belief to Mr. Ryan. Respondents further contend that after the staffer relayed her belief to Mr. Ryan, Mr. Ryan approached Mr. Rossi about cosigning a loan. Mr. Rossi agreed to cosign the loan. Mr. Ryan and Mr. Rossi met with Mr. Pompelia a few days after Mr. Ryan's first meeting with the Bank to complete the transaction. At this meeting, Mr. Pompelia and Mr. Rossi both asked Mr. Ryan if the loan was legal. Mr. Ryan assured them it was legal. Respondents contend that at the time Mr. Ryan made these assurances, Mr. Ryan believed that such a loan and loan

guarantee were lawful under the federal campaign laws. Mr. Ryan obtained an unsecured \$50,350 loan through Mr. Pompelia from Second National Bank, cosigned by Dennis Rossi. Mr. Ryan could not have obtained the loan without a cosigner. Mr. Ryan acted as an agent of his campaign and personally induced Mr. Rossi to guarantee the loan. Upon discovering that loan guarantees were in fact contributions pursuant to the Act, Mr. Ryan and his campaign took steps to correct the situation, including paying the loan back in full three months before the due date.

Violations

V. Mr. Ryan accepted an excessive contribution of \$24,175 in violation of 2 U.S.C. § 441a(f). The Committee and its treasurer accepted an excessive contribution of \$24,175, in violation of 2 U.S.C. § 441a(f). Respondents will cease and desist from violating 2 U.S.C. § 441a(f).

Civil Penalty

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Six Thousand Dollars (\$6,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

Other Provisions

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.


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.

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:


Rhonda J. Wosdingh
Associate General Counsel
for Enforcement

12/3/04
Date

FOR THE RESPONDENTS:


(Name) JUDITH L. CORLEY
(Position) COUNSEL TO RESPONDENTS

11/8/04
Date