

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

2002 NOV -5 P 12: 34

In the Matter of)
)
Bill Bradley for President, Inc. and)
Theodore V. Wells, as Treasurer;)
Kushner Companies and) MUR 5279
40 Associated Partnerships;)
41 Individual Respondents)
)

SENSITIVE

GENERAL COUNSEL'S REPORT # 2

TABLE OF CONTENTS

I.	Actions Recommended.....	2
II.	Background Factual Analysis.....	3
	A. Contributions to the Bradley Committee.....	6
III.	Legal Framework.....	11
	A. Contributions in the Name of Another.....	11
	B. Partnership Contributions.....	12
	C. Corporate Contributions.....	12
	D. Corporate Facilitation.....	13
	E. Conduit Liability.....	13
	F. Excessive Contributions.....	13
IV.	Legal Analysis.....	14
	A. Partner Liability.....	14
	1. Partnership Contributions.....	14
	a. Non-Partner Contributions.....	14
	b. Partner Contributions.....	15
	i. Contributions Not Attributed in Direct Proportion to Partners Profits.....	15
	ii. Contributions Not Attributed by Agreement of the Partners.....	16
	iii. Lack of Knowledge, Consent and Donative Intent.....	18
	2. Some Partners Might Have Allowed Their Names to be Used.....	20

24-04-408-2537

1	3. Impact of Partnership Contributions: Individual Excessive	
2	Contributions.....	23
3	a. Contributions in Excess of the Election Cycle Limitation.....	23
4	b. Contributions in Excess of the Annual Limitation.....	25
5	B. Coordinator Liability.....	28
6	1. Contributions in the Name of Another.....	28
7	2. Corporate Contributions.....	29
8	3. Corporate Facilitation.....	30
9	4. Corporate Status of Kushner Companies.....	33
10	5. Conduit Liability.....	34
11	C. Bradley Committee Liability.....	35
12	V. Summary of Recommendations.....	36
13	VI. Proposed Conciliation and Civil Penalty.....	40
14	A. Partner Civil Penalty.....	41
15	B. Coordinator Civil Penalty.....	42
16	C. Bradley Committee Civil Penalty.....	45
17	VII. Recommendations.....	46
18	Appendix 1.....	48
19	Appendix 2.....	49

I. ACTIONS RECOMMENDED

A. Enter into pre-probable cause conciliation with Kushner Companies and associated partnerships ("Kushner Entities"). *See* Appendix 1.A.

B. Enter into pre-probable cause conciliation with certain individuals. *See* Appendix 1.B.

C. Take no further action with respect to certain individuals. *See* Appendix 1.C.

1
2 **II. BACKGROUND FACTUAL ANALYSIS**

3 This matter concerns a scheme through which Kushner Companies and Charles Kushner
4 made corporate contributions and contributions in the names of others to the Bradley Committee
5 through several partnerships of which Mr. Kushner was the managing partner. During the course
6 of the audit of Bill Bradley for President, Inc. ("Bradley Committee"),¹ the Audit Division
7 identified 40 checks, drawn on the accounts of 40 different business entities totaling \$40,000,
8 made payable to the Bradley Committee. The checks were attributed to 39 individuals,² but the
9 checks were from the Kushner Entities, *i.e.* partnerships associated with the Kushner Companies.
10 Many, if not all, of the individuals did not know that the Kushner Entities made the contributions
11 in their names. In addition, some of the individuals were not even partners at the time of the
12 contributions.

13 Mr. Charles Kushner is the chairman of Kushner Companies, and he is also the managing
14 partner of numerous associated partnerships.³ Kushner Companies is one of the largest privately

¹ The audit of the Bradley Committee, undertaken in accordance with 26 U.S.C. § 9038(a), covered the period from December 4, 1998 through May 31, 2000.

² One check (#2657), drawn on the account of Sixty Six West Associates, was equally attributed to respondents Melvin Gebroe (\$500) and Morris Hammer (\$500). In addition, the Audit staff observed that respondents Seth Kaplowitz and Esther Schulder each submitted two \$1,000 checks, resulting in excessive contributions. 2 U.S.C. § 441a(a)(1). The Committee issued refund checks to these contributors.

³ Mr. Charles Kushner, through his involvement with multiple corporate managing partners, appears to be the managing partner of the following entities: 135 Montgomery Associates (President, Montgomery Developers Corp.), 836 Bloomfield Avenue (President, 836 Bloomfield Developers Corp.), BP Developers, L.P. (President, Bruckner P. Corp.), Brick Building Associates (President, Brick Building Corp.), Bruckner Plaza Associates L.P. (President, Bruckner P. Corp.), Colfax Manor Associates, L.L.C. (President, Colfax Manor Corp.), Constantine Village Associates, L.L.C. (President, Constantine V. Corp.), Dara Building Associates, L.L.C. (President, Dara Building Corp.), East Brunswick Corporate Center Associates (President, EBC Developers Corp.), Edgewater Apartments Associates, L.P. (President, Edgewater Building Corp.), Elmwood V. Associates, L.P. (President, Elmwood V. Corp.), General Greene Associates, L.P. (President, General Greene Village Corp.), Glen Ellen Associates, L.P. (President, Glen Ellen Building Corp.), Hackettstown Square Associates L.L.C. (President, Hackettstown Associates Corp.), Harbor Island Realty Associates L.P. (President, Long Branch Harbor, Inc.), LMEC Associates L.P. (President, CEML Corp.), Madison/64th Properties L.L.C. (President, Madison/64th Properties Inc.), Mt. Arlington Apartment Associates, L.P. (President, Mt. Arlington Building Corp.), New Puck L.P. (President, New Puck Corp.), Oakwood Apartments L.L.C. (President, Oakwood G. Corp.), Q.E.M. Associates, L.L.C. (President, Q.E.M. Corp.), Quail Ridge Associates L.P. (President, Quail R. Corp.), Randolph Realty

1 held real estate organizations in the Northeast and is a general partner in each of the partnerships
2 at issue in this MUR. Kushner Companies has interests in approximately 88 rental properties, 68
3 of which are in New Jersey. It also owns and manages more than 20,000 apartment units, in
4 addition to office, industrial and retail space in New York, Connecticut, Pennsylvania, Maryland,
5 Delaware, Massachusetts and Florida.⁴ All of the partnerships at issue have the same address, 26
6 Columbia Turnpike, Florham Park, New Jersey, which is also the address of the corporate
7 headquarters of Kushner Companies, a New Jersey corporation.

8 The facts uncovered during our investigation are consistent with media reports regarding
9 the political contribution activities of Mr. Kushner and the Kushner Companies. Those news
10 articles indicate that numerous companies, partnerships and individuals connected to Mr.
11 Kushner and Kushner Companies contributed over \$1 million to local, state, and federal
12 candidates in the 1999-2000 election cycle, using a particular bundling technique.⁵ According to
13 *The Star-Ledger*, a New Jersey paper, in an article dated August 19, 2001, Charles Kushner
14 "controls an array of more than 60 partnerships and corporations that he routinely uses to step

Associates, L.L.C. (President, Randolph Building Corp.), Reike L.P. (President, Reike Corp.), Riverside Park Industrial Associates, L.L.C. (President, Riverside Associates Inc.), Rolling Gardens Associates L.L.C. (President, Rolling Gardens Developers Corp.), Township Associates, Sixty Six West Associates L.L.C. (President, 66 W.M.P. Corp.), Wallkill Apartments Associates, L.P. (President, Wallkill Construction Inc.), Westbrook Associates L.P. (President, Westbrook Building Corp.) and Westminster Sales & Marketing L.P. (President, Westminster Sales and Marketing Corp.).

⁴ See Kushner Companies Website (visited Oct. 31, 2003) <<http://www.kushnercompanies.com>>; see also New Jersey Apartment Association, *Kushner Companies Acquires WNY Group, Inc.* (visited Oct. 31, 2003) <http://www.njaa.com/njaa_association_news.htm>. Dun and Bradstreet reports indicate that Kushner Companies is involved in approximately 100 locations. These properties appear to be managed by partnerships or limited liability companies in which Kushner Companies is the general partner.

⁵ As a result of local rules, some candidates, such as New York mayoral candidates Alan Hevesi and Mark Green, returned the vast majority of Kushner contributions. The New York City Campaign Finance Board found that Mr. Kushner and his partnerships constituted a single source under the city's campaign finance laws. First General Counsel's Report, attachment 5 at 3. Candidates in New York cannot accept more than \$4,500 from a "single source," which is defined as any person or a group of entities controlled by the same person or combination of people. See New York Campaign Finance Board Rule 1-04(h) (2001); see also Campaign Finance Board Advisory Opinion 2001-6 (June 14, 2001).

1 around the individual contribution limits.” For example, according to *The Record* of August 5,
2 2001, Kushner Companies partners delivered an \$18,000 bundle of checks to Torricelli for U.S.
3 Senate, Inc. on January 22, 1999, and an additional \$74,000 on February 19, 1999. The article
4 stated, “[Mr.] Kushner declined to be interviewed, but a spokesman confirmed that [Mr.]
5 *Kushner controlled all of the partnerships* involved.” First General Counsel’s Report,
6 attachment 5 at 2 (emphasis added). In addition, the article noted that Mr. Kushner wrote the
7 checks in the names of his business partners, listed the same address as the Kushner Companies
8 office in Florham Park, wrote checks of identical amounts, and transmitted the checks on a single
9 day.

10 Our investigation revealed that the Kushner Companies sent contributions to numerous
11 federal candidates and political committees in an identical manner between 1999 and 2002. The
12 Kushner Companies would send cover letters to the committees on corporate letterhead,
13 apparently signed by a corporate officer of Kushner Companies. The cover letter would
14 accompany an attribution schedule matching the contribution amounts to specific individuals.
15 Along with these documents, the Kushner Companies would also send a bundle of checks. The
16 check bundles were sent with different corporate names printed thereon.⁶ In addition, the
17 Kushner Entities held corporate retreats and receptions that might have been used as an
18 opportunity to collect political contributions and to promote certain candidates such as Bill
19 Bradley. Attachment 8.

20

⁶ For examples of such correspondence to numerous committees, see Attachment 20.

A. Contributions to the Bradley Committee

As noted above, the Audit Division identified 40 checks that were drawn on the account of 40 different business entities, totaling \$40,000, and were made payable to the Bradley Committee. A contribution schedule provided to the Bradley Committee from the Kushner Entities listed all the contributors as partners in various "partnerships." The schedule also listed the names of the partnerships, the contributing partner, and the address of the partnership. The checks that the Kushner Entities forwarded to the Bradley Committee were mass-produced and appear to have been sent from a single corporate source, the Kushner Companies. Corporate names, bank routing numbers, payee names, account information, and other notations were printed in the same type; and all checks appeared to have the same signature.⁷ All of the checks were also drawn on accounts at one of two different banks: Valley National Bank and Norcrown Bank.⁸ Lastly, the batches of checks were delivered to the Bradley Committee on the same dates. See First General Counsel's Report at 10, 25.

The Chief Operating Officer of Kushner Companies, Mr. Scott Zecher, collected and forwarded contributions on corporate letterhead to the Bradley Committee on June 17, 1999. Attachment 10. However, in a declaration under penalty of perjury, Mr. Zecher states that he did not assume his responsibilities until August 1999, and that, therefore, he "had no involvement in any contributions which were made to the Bradley Committee." Attachment 11. However, several partners identified Mr. Zecher as the individual who, in the summer of 2001, asked them

⁷ Although the auditors are not handwriting experts, a comparison of the check signatures with Charles Kushner's signature as displayed on the Kushner Companies' website suggests that the signatures may have originated from the same person. See First General Counsel's Report, attachment 1 at 10.

⁸ Norcrown Bank is part of the Kushner group of businesses.

1 to sign attribution statements for political contributions that were made two years prior without
2 their knowledge.⁹ Attachment 6.

3 The Bradley Committee stated that the Kushner Companies had attempted to make
4 similar political contributions totaling \$50,000 to the Bradley Committee in January 1999, six
5 months earlier. However, the Bradley Committee returned the 52 partnership contributions
6 because "additional information" requested from Kushner Companies was not forthcoming.
7 Attachment 5 at 1. Subsequently, "Mr. [Brian] Bentzlin and his successor, Scott Zecher,
8 provided the [Bradley] committee and its legal counsel, Perkins Coie LLP, with requested
9 information." Attachment 5 at 2. On June 22, 1999, the Bradley Committee received and
10 accepted 41 contributions from Kushner Entities totaling \$40,000¹⁰ along with an attribution list
11 dated June 17, 1999. The Bradley Committee kept \$34,000 and returned contributions in the
12 amount of \$6,000 between August 16, 1999, and March 18, 2002. *See* Attachment 5 at 2-3. All
13 of the contributions are the subject of the original referral to the Office of General Counsel.¹¹

14 On June 26, 2002, the Commission made reason to believe findings against Kushner
15 Companies, its officers, and its associated partnerships; the individual partners; and the Bradley
16 Committee. The violations involved the facilitation and making of corporate contributions,
17 contributions made in the name of another, and the receipt of these prohibited contributions by

⁹ Kushner Companies and Mr. Scott Zecher prepared the attribution statements in response to questions raised about the contributions by the Audit Division. *See infra* note 17.

¹⁰ Two of the contributions from Sixty Six West Associates in the names of Melvin Gebroe and Morris Hammer were in the amount of \$500.

¹¹ Although the regulations contain safe harbor provisions for committees for the receipt and timely return of illegal contributions, the refunds made by the Bradley Committee were untimely. *See* 11 C.F.R. §§ 103.3(b)(1)-(2). The Bradley Committee's partial refund of the contributions does not negate the fact that Kushner Entities made prohibited corporate contributions and contributions in the name of another. Thus, this matter is being pursued with respect to the entire \$40,000 of prohibited contributions.

1 the Bradley Committee. The Commission authorized the Office of General Counsel to
2 investigate this matter.

3 The Office of General Counsel's investigation reveals that there were three categories of
4 contributors under whose names contributions were made to the Bradley Committee:¹²

5 • Individuals who were not partners at the time that the contributions were made
6 to the Bradley Committee (10 of 38 contributors).¹³ See Attachments 3 at 2 and
7 18 at 2-3.

8 • Partners whose names were used to make contributions, but who denied any
9 knowledge of the contributions made in their names (14 of 38 contributors).¹⁴
10 Attachment 6.

11 • Partners who refused to submit answers regarding their knowledge (23¹⁵ of 38
12 contributors).¹⁶ Attachment 2.

¹² As a part of the investigation, this Office sent out subpoenas and questionnaires. For a detailed listing of the respondents and corresponding violations, see the chart at Appendix 2.

¹³ The contributions were from the following entities: Pitney Farms Associates (Bert Ghavami), Dara Building Associates (Seth Kaplowitz), Montgomery Associates (Seth Kaplowitz), BP Developers L.P. (Shellie Laulicht), Randolph Building Associates L.P. (Heywood Saland), Colfax Manor Associates (Esther Schulder), East Brunswick Corporate Center (Stuart Gladstone), Pheasant Hollow Associates (Barbara Gellert), 135 Montgomery Associates (George Gellert), 836 Avenue Associates (Alan Hammer) and Hackettstown Square Associates, L.P. (Leonard Witman). See Attachments 3 at 2 and 18 at 2-3.

¹⁴ Individuals stating they had no knowledge of the contributions are: Abby Jo Ages, Bernard Eichler, Jonathan Kushner, Marc Kushner, Murray Kushner, Gene Schenkman, Mark Schenkman, Esther Schulder, Jacob Schulder, Jessica Schulder Orbach, Ruth Schulder, Melissa Serwitz, Ralph Tawil, Jr., and Ralph Tawil, Sr.

¹⁵ This Office notes that there is overlap between this category and the first category of partners, as nine of these contributors were not partners at the time the contributions were made.

¹⁶ Individuals who have not answered questions posed by this Office, despite repeated requests for information (see Attachment 2), include: Melvin Gebroe, Barbara Gellert, George Gellert, Bert Ghavami, Stuart Gladstone, Alan Hammer, Morris Hammer, Seth Kaplowitz, Dara Kushner, Jared Kushner, Joshua Kushner, Nicole Kushner, Rae Kushner, Linda Laulicht, Pamela Laulicht, Shellie Laulicht, Heywood Saland, Mel Scheinerman, Steven Silverman, John Sims, Alex Tarapchak, Leonard Witman and Edith Wulack.

1 The first category consists of two sub-categories: 1) individuals who were not partners of
2 any relevant partnerships, and 2) those who were partners of entities that, in turn, held a
3 partnership interest in the contributing partnerships (*i.e.*, second-tier partners). Four Kushner
4 partnerships attributed contributions to three individuals in the former category. Attachment 3
5 at 2. Furthermore, the Kushner partnerships attributed the contributions to six second-tier
6 partners. Attachment 18 at 2-3.

7 In the second category, fourteen partners claim that they were not aware of the
8 contributions at the time they were made in their names. They also stated that the funds for these
9 contributions did not originate from a bank account or personal partnership interest that they
10 controlled. Attachment 6. They stated that they first learned of the contributions when Mr. Scott
11 Zecher, Chief Operating Officer of Kushner Companies, asked them to sign attribution
12 statements in the summer of 2001, two years after the fact.¹⁷ Mr. Zecher also asked the partners
13 to sign attribution statements for other contributions that Kushner Companies had already made
14 to other political committees without their knowledge. Attachment 6. Through these attribution
15 statements, some partners stated they made and had knowledge of the contributions and the
16 managing agent confirmed to them that their personal capital accounts had been debited the full
17 amount of the contributions. Attachment 21.

18 Some of these same partners who signed attribution statements informed this Office,
19 under penalty of perjury, that they had no knowledge of any of the contributions to the numerous
20 political committees at the time they were made. The Kushner Entities contend that they sent

¹⁷ In the context of the Bradley Committee's audit, the Kushner Companies asked the Audit Division to review and approve these attribution statements. First General Counsel's Report, Attachment 1 at 3. The Audit Division declined to do so.

24 04 43B 2592

1 Internal Revenue Service Schedule K-1 forms to the partners.¹⁸ However, the forms do not, by
2 themselves, provide notice to partners that specific deductions were for political contributions
3 made in their names. Thus, even a partner who thoroughly reviewed a K-1 form would not have
4 known the reason for specific deductions. *See* Attachments 13 and 19 at 10. Moreover, although
5 individual capital accounts were reduced by the amount of the contributions, additional
6 distributions from the partnership to the partners' capital accounts in the amount of the
7 contributions were made to all but one of the capital accounts. Attachment 18 at 3-13. Even
8 though many of the partnerships showed operating losses and individual capital accounts had
9 negative balances, cash distributions continued to be made for contributions and other reasons.¹⁹
10 *Id.*

11 Many individuals who did not receive any notice of contributions that had been attributed
12 to them by the Kushner Entities made contributions to candidates on their own. As detailed
13 below, this may have caused eight Respondents to make contributions (when aggregated with the
14 partnership contributions) that exceeded the \$25,000 annual limit.

15 Partners in the third category (those who refuse to submit answers regarding their
16 knowledge), along with the Kushner Entities, submitted a consolidated response in reply to the
17 Commission's reason to believe finding, in which they asserted the right of the Kushner Entities
18 to make contributions in the names of the partners without their knowledge or consent.²⁰

¹⁸ Generally, a partnership uses the Internal Revenue Service Schedule K-1 to report to the Internal Revenue Service a partner's share of the partnership's income, credits, and deductions, among other things. *See* Attachment 13.

¹⁹ Distributions were made to partners based on their ownership interests. Other distributions were made for unknown purposes.

²⁰ Despite a follow-up request for information regarding their knowledge of the contributions, the partners in the third category refused to answer the questions posed by this Office. Attachment 2.

Attachment 1. In that same consolidated response, the Kushner Entities denied making corporate contributions. Attachment 1 at 14.

III. LEGAL FRAMEWORK

The facts in this case lead to the conclusion that Charles Kushner, the Kushner Companies, and the Kushner Entities used the names of individuals to make contributions to the Bradley Committee. Because Charles Kushner and the Kushner Companies made the contributions through partnerships, two principal legal concepts are intertwined in this matter. One is the prohibition against contributions in the name of another. (Discussed in Section A below) 2 U.S.C. § 441f. The second is the ability of partnerships to make contributions on behalf of its partners. (Discussed in Section B below) 11 C.F.R. § 110.1(e). In the instances where Charles Kushner, the Kushner Companies, and the Kushner Entities made contributions in the name of individuals who were not partners at the time of the contribution, the partnership rules are not controlling. However, the Commission's partnership rules govern the remaining contributions. Four other violations of the Act are also at issue in this MUR—corporate contributions, corporate facilitation, conduit liability, and excessive contributions. (Discussed in Sections C-F below)

A. Contributions in the Name of Another

Pursuant to 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person. 11 C.F.R. § 110.4(b)(1). A person who gives anything of value which was provided by another person without disclosing the source to the recipient candidate or who makes a contribution and

1 attributed the source as someone else, when in fact the contributor was the source, has made a
2 contribution in the name of another. 11 C.F.R. § 110.4(b)(2).

3 **B. Partnership Contributions**

4 A partnership is a "person" under the Federal Election Campaign Act of 1971, as
5 amended ("the Act"), and may make contributions to influence federal elections. 2 U.S.C.
6 §§ 431(11) and 441a(a)(1). Partnership contributions are treated as both a contribution from the
7 partnership as a person and from the individuals who make up the partnership. 11 C.F.R.
8 § 110.1(e). Thus, the contribution is subject to both the partnership's and each partner's
9 contribution limits. *Id.* Commission regulations require that partnership contributions be
10 attributed *either* 1) in direct proportion to the partner's share of profits, according to instructions
11 provided to the political committee, *or* 2) by agreement of the partners if the partner's profits are
12 reduced in proportion to the contribution attributed to him or her. *See* 11 C.F.R. §§ 110.1(e)(1)
13 and (e)(2).

14 Since the partnership contributions count towards both the partnership's *and* an
15 individual's contribution limits, the regulations expressly prohibit corporate partners from
16 making contributions. 11 C.F.R. § 110.1(e); *see also* 11 C.F.R. §§ 110.1(b), (c) and (d).

17 **C. Corporate Contributions**

18 It is unlawful for any corporation to make a contribution or expenditure in connection
19 with a federal election, or for a candidate or political committee to knowingly accept such a
20 contribution. 2 U.S.C. § 441b(a). It is also unlawful for any corporate officer or director to
21 consent to any such contribution. *Id.* This broad prohibition extends to "anything of value"
22 given to a federal candidate or campaign. 2 U.S.C. § 441b(b)(2).

D. Corporate Facilitation

Corporations are explicitly forbidden from using corporate resources to engage in fundraising activities. 11 C.F.R. § 114.2(f). Examples of facilitation include directing subordinates to plan, organize, or carry out a fundraising project as part of their work responsibilities and using corporate resources and providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes or other similar items. 11 C.F.R. § 114.2(f)(2). The Commission has consistently determined that the “value” of the corporate contribution arising from corporate facilitation consists not only of the use of the corporate facilities and resources, but includes the contributions which the corporation collects as well. *See* MURs 3540 (Prudential), 3672 (IBM, Chrysler), 4886 (Tenet Healthcare) and 4887 (FedPAC).

E. Conduit Liability

A conduit is any person who receives and forwards a contribution to a candidate or candidate’s authorized committee. 11 C.F.R. § 110.6(b)(2). If a person collects contributions as a conduit and exercises “direction and control” over the making of the contribution, the contribution is considered a contribution by both the original contributor and the conduit. 11 C.F.R. § 110.6(d)(2). Thus, the contributions are chargeable to the conduit’s limit for the recipient candidate in addition to the limit of the actual donor. 11 C.F.R. § 110.6(d)(1). Corporations are forbidden from acting as conduits for contributions. 11 C.F.R. § 114.2(f).

F. Excessive Contributions

The Act prohibits individuals from making contributions in excess of \$1,000 per candidate per federal election.²¹ 2 U.S.C. § 441a(a)(1). The Act also prohibits individuals from

²¹ With respect to contributions made on or after January 1, 2003, sections 102 and 307 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, amended section 441a to modify contribution limits.

1 making contributions aggregating more than \$25,000 in any calendar year. 2 U.S.C.
2 § 441a(a)(3). Any contribution made to a candidate with respect to a particular election year, but
3 made in a non-election year, is considered to be made during the calendar year in which the
4 election is held. 11 C.F.R. § 110.5(c)(1)-(2).

5 **IV. LEGAL ANALYSIS**

6 The Respondents in this matter fall into three general categories: 1) individuals whose
7 money and/or names were used to make contributions; 2) individuals actively involved in the
8 execution of the partnership contribution scheme (*i.e.*, Charles Kushner, Scott Zecher, the
9 Kushner Companies, and the Kushner Entities); and 3) the recipient committee. This report
10 discusses the potential liability of all actors and deals with the violations group by group. For
11 some respondents, such as Charles Kushner, there is potential liability for different acts.

12 **A. Partner Liability**

13 **1. Partnership Contributions**

14 **a. Non-partner Contributions**

15 On June 16-17, 1999, eleven partnerships made political contributions to the
16 Bradley Committee, attributing the contributions to ten individuals (Bert Ghavami, Seth
17 Kaplowitz, Shellie Laulicht, Heywood Saland, Esther Schulder, Stuart Gladstone,
18 Barbara Gellert, George Gellert, Alan Hammer, and Leonard Witman) who were not
19 partners at the time. Some of these individuals had been partners in prior years and others
20 were partners of entities that, in turn, held a partnership interest in the contributing
21 partnerships. See Attachments 3 at 2 and 18 at 2-3. For the individuals who were not

The BCRA set the individual contribution limit at \$2,000 and the annual individual contribution limit to candidates at \$37,500. Both of these limits are adjusted annually based on increases in the consumer price index. 2 U.S.C. § 441a(c).

1 partners at the time the contributions were made, this matter represents a case of the
2 Kushner Entities, Charles Kushner as Managing Partner of those Entities, and the
3 Kushner Companies making contributions in the name of another.²² 2 U.S.C. § 441f;
4 11 C.F.R. § 110.4(b)(1)(i). Since the individuals were not partners at the time of the
5 contributions, it would appear that their names were used to effect the contributions. *Id.*
6 However, because the evidence suggests that individuals were not aware of the
7 contributions (see attachment 6), this Office recommends that the Commission take no
8 further action against the ten individuals.

9 **b. Partner Contributions**

10 The contributions made with respect to individuals who were partners presents a more
11 complicated case because the Commission's partnership regulations allow partnerships to make
12 contributions on behalf of individual partners. 11 C.F.R. § 110.1(e). However, the evidence
13 reflects that Charles Kushner, Kushner Entities, and Kushner Companies failed to comply with
14 the partnership contribution regulations. In fact, it would appear that they used the partnerships
15 as a vehicle to make contributions in the name of individual partners, and to the extent that the
16 partners allowed their names to be used to make the contributions, the partners are also liable
17 under 2 U.S.C. § 441f. 11 C.F.R. § 110.4(b)(1)(ii).

18 **i. Contributions Not Attributed in Direct Proportion to Partners**

19 **Profits**

20 None of the partnerships attributed contributions in direct proportion to partnership
21 interests/profits as directed by 11 C.F.R. § 110.1(e)(1).²³ For example, Rolling Gardens

²² See *infra* discussion at Section IV.A.2.

²³ Kushner partnership agreements also provided that profits were to be distributed in proportion to partnership interests. For example, the partnership agreement for Quail Ridge Associates L.P. states that, "The

Associates, which has ten partners with varying degrees of ownership,²⁴ contributed \$1,000 to the Bradley Committee and \$3,000 total in political contributions for the year. Rolling Gardens attributed the contributions to the Joshua Kushner Trust. Because the Joshua Kushner Trust held a 10% ownership interest in Rolling Gardens Associates, adherence to section 110.1(e)(1) should have resulted in \$100 (10% of \$1,000) attributed to the Joshua Kushner Trust for the Bradley contribution and \$300 total for the year (10% of \$3,000). Instead, \$3,000 was attributed to the Joshua Kushner Trust. The amount of \$2,700 (\$3,000 - \$300) should have been attributed proportionately among the other partners. Given that the partnerships did not attribute the contributions in direct proportion to the partnerships' interests, the partnerships did not comply with the first prong of the partnership regulations.

ii. Contributions Not Attributed by Agreement of the Partners

Respondents' failure to follow the first prong of the partnership rules would require them instead to proceed under section 110.1(e)(2) and obtain the "agreement of the partners" to otherwise attribute the contributions. But Respondents did not do this either. The Office of General Counsel did not discover any agreement by the partners to attribute the contributions under an alternative method.

Charles Kushner, Kushner Companies, and the Kushner Entities assert in response that such an agreement is not necessary because the general managing and/or operating agreements

General Partners shall distribute Net Cash Flow to the Partners at such times as the General Partner shall determine . . . [first, to partners who made a Default loan; next, to partnerships in an amount equal to their unrecovered additional contributions; and] the balance, if any, shall be distributed to the Partners in proportion to their partnership interests." Similar language is found in at least six other partnership agreements: 135 Montgomery Associates, Sixty-Six West Associates, BP Developers, Dara Building Associates, Brick Building Associates, and Constantine Village Associates.

²⁴ The partners of Rolling Gardens Associates, their respective partnership interests, and the distributions from Rolling Gardens Associates to the partners (for 1999) are as follows: Rolling Gardens Dev. Corp. (1%), Charles Kushner (24%), Richard Stadtmayer (5%), Joshua Kushner Trust (10%), Esther Schulder (10%), Linda Laulich (10%), Murray Kushner (10%), Dara Kushner Trust (10%), Jared Kushner Trust (10%), and Nicole Kushner Trust (10%).

1 authorize the partnerships to make contributions on behalf of partners using partnership funds. In
2 New Jersey, partnership agreements provide managing partners and general partners with
3 discretion in managing the affairs of a partnership. N.J. Stat. Ann. § 42:2B-66(a) (West 2002).
4 However, this grant of authority cannot override the Commission's regulatory requirement for
5 partnerships to obtain the agreement of partners before they can attribute contributions in other
6 than a proportionate manner. Although the operating agreements in question grant general
7 partners broad powers,²⁵ it is doubtful that such broad language (or even specific language) in the
8 agreements could override the Commission's regulatory requirement that partners agree to
9 attribute contributions in a non-proportionate manner.

10 Furthermore, we did not find any evidence to show that the partnerships ever reduced the
11 partners' profits,²⁶ as required by 11 C.F.R. § 110.1(e)(2). On the contrary, we found that the
12 partnerships debited the accounts by the amount of the contributions and then increased the
13 partners' distributions by the amount of the contributions (*i.e.*, the political contributions were
14 added to the distributions received by the partners' capital accounts).²⁷ Attachment 18 at 3. In

²⁵ For example, general partners in the Kushner Entities are granted the right to enter into agreements and other instruments "necessary or incidental to the business of the Partnerships and the financing thereof." See Quail Ridge Associates L.P. Partnership Agreement. In addition, general partners are permitted to borrow money and "to establish, maintain and draw upon checking and other accounts of the Partnership" and are given a power of attorney to make, execute, acknowledge and file "any deed, note...or other instrument or document of any kind necessary to accomplish the business; purposes and objectives of the Partnership." *Id.* Some of the partnership agreements also include express limitations on the powers of General Partners. See Operating Agreement, Randolph Realty Associates LLC ("the Managing Member shall have no authority to act in any fashion that would cause the Company to violate the terms of [the] Agreement or to do any act in violation of any applicable law or regulation thereunder") (emphasis added).

²⁶ Although it appears that the listed contributors' capital accounts were charged for the political contributions, it is not clear whether this fact translates into a measurable reduction of partner profits given that, in 12 of 16 cases, the partner's capital account balance was negative. Despite the negative capital account balances, partners continued to receive distributions. Therefore, the capital account balances do not appear to affect partner profits. Section 110.1(e)(2) states that contributions must reduce partner profits accordingly; however, the regulation does not mention capital accounts and whether a reduction in capital accounts is legally sufficient. Attachment 18 at 1-2.

²⁷ According to the Audit Division's analysis, "Generally, the total distributions are allocated proportionately according to their respective ownership interest. Then the distribution amount paid to the partner or partners to

1 effect, Charles Kushner and the Kushner Entities subsidized the political contributions made in
2 the names of the partners.

3 **iii. Lack of Knowledge, Consent and Donative Intent**

4 Notwithstanding their failure to meet the allocation requirements of section 110.1(e)(1)
5 and section 110.1(e)(2), Charles Kushner, Kushner Companies, and Kushner Entities argue that
6 partnership consent or donative intent on behalf of a partner is not needed to make a contribution
7 in the name of one of its partners.²⁸ In making this sweeping argument, Charles Kushner,
8 Kushner Companies, and Kushner Entities lump together contributions made on behalf of
9 partnerships under section 110.1(e)(1)—pro rata contributions—and those made under section
10 110.1(e)(2)—contributions made by agreement of the partners. Leaving aside the former, which
11 are not at issue herein, prior Advisory Opinions lead to the conclusion that partner consent is
12 required for partnership contributions under section 110.1(e)(2). Thus, Commission advisory
13 opinions presume that any contributor listed on an attribution schedule by a partnership would be
14 informed of and would approve or disallow any partnership contribution on his or her behalf.
15 See AO 1982-13 (“partners have reached an agreement as to . . . how each of the contributions
16 made by the partnership will be attributed to them”); see also AO 1981-50 (incidental partnership
17 expenditures to implement partnership plans “made as part of the process of obtaining the

whom the contributions are attributed are increased by the amount of the contribution.” Attachment 18 at 3. For example, the Joshua Kushner Trust received \$12,000 in distributions, which included \$3,000 in political contributions. But for the political contributions, it would have received \$9,000, the amount received by similarly situated partners with a 10% interest. See *supra* note 24.

²⁸ The consolidated response states, “So ‘consent,’ which the Commission refers to as ‘donative intent,’ is the rationale for the separate signature requirement—a requirement from which partnerships are expressly excused.” Attachment 1 at 19. The consolidated response notes that partnerships are not expressly required to provide partner signatures when making contributions. 11 C.F.R. § 110.1(k). *Id.* However, a closer examination of section 110.1(k) reveals that the Commission’s primary reason for waiving the signature requirement was for administrative convenience. Additional signatures would duplicate the donative intent that attribution lists are supposed to convey. See *Explanation and Justification for 11 C.F.R. § 110.1(e)*, 52 Fed. Reg. 764 (Jan. 9, 1987) (“The Commission has concluded that such a requirement [requiring partners to sign written instrument] would be burdensome for many

1 *consent* of those partners who wish to share in the Partnership contribution” are permissible)
2 (emphasis added). In this matter, Charles Kushner, Kushner Companies, and the Kushner
3 Entities did not inform the partners of the partnership contributions, or even allow them an
4 opportunity to consent to the contributions in their names. The practical consequences of failing
5 to ascertain that political contributions are made knowingly and voluntarily by the partners would
6 be instances of contributions that are made by non-partners²⁹ and contribution limits that are
7 exceeded. *See* discussion at section IV.A.3.

8 Charles Kushner, Kushner Companies, and Kuser Entities not only failed to inform the
9 adult partners, they also did not allow political contributions to be made “knowingly and
10 voluntarily” by minor children. 11 C.F.R. § 110.1(i)(2).³⁰ Eleven of the 40 contributions were
11 attributed to trusts, some of whose beneficiaries were minors in 1999.³¹ However, six of the trust
12 beneficiaries submitted signed declarations stating that they did not knowingly and voluntarily
13 authorize political contributions from their trusts via partnerships — all entities that Mr. Charles
14 Kushner exclusively manages.³² *See* Attachment 6 at 3-5 and 12-14. The Kushner Companies’
15

partnerships and would duplicate the attribution instructions that the partnership must already provide”). Therefore, the Commission never envisioned attribution lists devoid of donative intent.

²⁹ The Kushner Entities and other individuals subscribing to the consolidated response characterize these contributions attributed to non-existent partners as mistakes. Attachment 3 at 2. However, such so-called “mistakes” would not have occurred had the partnerships informed each individual partner of the contributions prior to issuing the contribution checks to the Bradley Committee.

³⁰ Effective November 6, 2002, individuals 17 years or younger may not contribute to federal candidates. 2 U.S.C. § 441k.

³¹ The attribution schedule listed Shellie Laulicht Trust, Ruth Schulder Trust, Jessica Schulder Trust, Nicole Kushner Trust, Melissa Serwitz Trust, Jacob Schulder Trust, Marc Kushner Trust, Jonathan Kushner Trust, Pamela Laulicht Trust, Joshua Kushner Trust, and Dara Kushner Trust as partners in the various Kushner Entities.

³² Declarations were submitted by Jonathan Kushner, Marc Kushner, Jacob Schulder, Jessica Schulder, Ruth Schulder, and Melissa Serwitz.

1 reading of the Act would effectively invalidate 11 C.F.R. § 110.1(i)(2) by allowing partnerships
2 to disregard the donative intent (or lack thereof) of minor children.

3 **2. Some Partners Might Have Allowed Their Names to be Used**

4 Fourteen individuals³³ presented declarations, under penalty of perjury, stating that they
5 had no knowledge of contributions made in their names. Although the Kushner Companies
6 claim that the K-1 forms informed the partners of the contributions, as noted earlier, the K-1
7 forms do not specify deductions for political contributions that were made in the name of the
8 partners. Since these individuals were not aware of the contributions, they could not have
9 knowingly allowed the partnerships to use their names.³⁴ 2 U.S.C. § 441f; 11 C.F.R.
10 § 110.4(b)(ii). Therefore, we recommend that the Commission take no further action against
11 these 14 individuals.

12 Nevertheless, 23 individuals subscribed to the consolidated response.³⁵ We are not
13 certain if any of these individuals were aware of the contributions at the time that they were
14 made. When we sent questionnaires to these individuals about whether they knew of the
15 contributions, they refused to respond to our inquiry. Instead, they argued that their knowledge
16 was not required to make contributions to the Bradley Committee. Given these facts and absent
17 countervailing evidence, these individuals may have allowed their names to be used to make the
18 contributions. 2 U.S.C. § 441f.

³³ See *supra* note 14.

³⁴ Attorneys for Kushner Companies have alleged that the funds originated from individual partner accounts, but this assertion could not be confirmed by the auditors. Furthermore, all of the 14 individuals stated under penalty of perjury that the funds for the political contributions did not originate from a bank account or personal partnership interest that they controlled. Attachment 6.

³⁵ See *supra* note 16 and accompanying text.

1 For ten of the 23 individuals, we have independent evidence that they were not partners
2 and/or unaware of the contributions at the time they were made. Therefore, we recommend that
3 the Commission take no further action against these individuals. The chart below details the
4 factors we used in our decision to recommend that the Commission take no further action against
5 these 10 individuals who subscribed to the consolidated response.

Individuals/Factors	Non-Partner³⁶	"After the fact" Attribution³⁷	Contribution Refund³⁸	"No Knowledge" statement³⁹
Barbara Gellert⁴⁰	X	X		
George Gellert⁴¹	X	X		
Bert Ghavami	X	X		
Stuart Gladstone	X	X		
Alan Hammer	X	X		
Seth Kaplowitz⁴²	X	X	X (of excessive)	
Shellie Laulich	X	X		
Heywood Saland	X	X		
Leonard Witman	X	X		
Edith Wulack			X	X

6

³⁶ See discussion at IV.A.1.a.

³⁷ See *infra* note 44.

³⁸ Six individuals received refunds of contributions made to the Bradley Committee for various reasons: Edith Wulack, Ralph Tawil, Ralph Tawil, Jr., Bernard Eichler, Seth Kaplowitz, and Esther Schulder.

³⁹ See *supra* note 14.

⁴⁰ See discussion at IV.A.3.b.

⁴¹ See discussion at IV.A.3.b.

⁴² See discussion at IV.A.3.a.

24 04 43 2633

1 The nine individuals who were not partners, even though they may have subscribed to the
2 consolidated response or signed "after-the-fact" attribution statements, could not have made
3 partnership contributions and it is unlikely these individuals were aware of these contributions at
4 the time they were made. The crux of a 441f violation is to "knowingly permit his or her name to
5 be used to effect that contribution." 11 C.F.R. § 110.4(b)(1)(ii). The phrase "to effect that
6 contribution" suggests the necessity of knowing about the contribution at the time it was made,
7 which is improbable for non-partners. An otherwise false statement contradicting a contributor's
8 non-partner status, signed two years after the fact at the request of Kushner Companies, does not
9 attach liability to a contributor who was likely unaware of the contribution at the time it was
10 made. *See* Attachment 26. Therefore, as discussed below in greater detail, this Office
11 recommends pursuing Kushner Entities for making non-partner contributions rather than the non-
12 partners themselves when it is doubtful that they knowingly permitted their names to be used to
13 make contributions in the name of another.

14 Edith Wulack was a partner who subscribed to the consolidated response. However, prior
15 to being represented by counsel, Ms. Wulack spoke to a Commission Investigator, Charles W.
16 Hume, and told him, "She was not really aware of the contribution until she got the letter from
17 the FEC." Attachment 22 at 1. Also, Ms. Wulack apparently refused to sign an attribution
18 statement proffered by Mr. Scott Zecher in June, 2001. This caused the Bradley Committee to
19 issue a \$1,000 refund to "Edith Wulack/Sod Farm Associates."⁴³ *Id.* at 2-3. Therefore, Ms.
20 Wulack did not permit her name to be used to effect the contribution.

⁴³ Three other individuals, Ralph Tawil, Ralph Tawil, Jr., and Bernard Eichler also received refunds of the contributions made in their names apparently because they did not sign attribution statements when requested by Scott Zecher in June, 2001. However, unlike Ms. Wulack, all three did not subscribe to the consolidated response and all three submitted declarations under penalty of perjury that they were unaware of the contributions at the time they were made.

1 We recommend that the Commission continue to pursue the remaining 13 partners who
2 subscribed to the consolidated response for violating 2 U.S.C. § 441f.

3
4
5
6 **3. Impact of Partnership Contributions: Individual Excessive**
7 **Contributions**

8 One of the by-products of the Kushner Entities' failure to inform partners and others of
9 contributions that were made in their names is that certain individuals exceeded their candidate
10 and personal contribution limitations.

11 **a. Contributions in Excess of the Election Cycle Limitation**

12 The Kushner Entities made multiple contributions in the name of Esther Schulder and
13 Seth Kaplowitz that caused these individuals to exceed their individual contribution limitations.
14 2 U.S.C. § 441a(a)(1). In Esther Schulder's case, two \$1,000 contributions were made from
15 Colfax Manor Associates and College Park Associates respectively to the Bradley Committee on
16 June 16-17, 1999. Montgomery Associates and Dara Building Associates also made two \$1,000
17 contributions to the Bradley Committee on June 16, 1999 in the name of Seth Kaplowitz.

18 On September 10, 1999, the Bradley Committee wrote letters to both individuals to
19 refund the excessive \$1,000 contributions. The Bradley Committee sent the letters to the
20 Kushner Companies. Attachment 23 at 1 and Attachment 24 at 1. Because both \$1,000 refund
21 checks had not been cashed, the Bradley Committee wrote to both individuals again 17 months
22 later on February 21, 2001, requesting that the refunds be transacted. Attachment 23 at 2 and

Attachment 24 at 2. The Bradley Committee again sent both letters to Kushner Companies' address.

On February 23, 2001, the Bradley Committee wrote to Scott Zecher informing him that both checks had not been negotiated. Attachment 23 at 3. Scott Zecher replied on March 13, 2001, requesting replacement checks for both Seth Kaplowitz and Esther Schulder. *Id.* at 4. The refund checks for the excessive contributions were re-issued on June 29, 2001, and the Bradley Committee sent letters to Esther Schulder, Seth Kaplowitz, and Scott Zecher at the Kushner Companies' corporate address. Attachment 23 at 5 and Attachment 24 at 3. However, in the interim, on June 7, 2001, both Esther Schulder and Seth Kaplowitz signed after the fact attribution statements regarding contributions made to the Bradley Committee and numerous other committees in their names. Attachment 23 at 7-14 and Attachment 24 at 5-10.

In response to the Commission's reason to believe finding, Esther Schulder confirmed, under penalty of perjury, that she had no knowledge of the Bradley contribution or the contributions to other committees at the time they were made. Attachment 6 at 11. She also stated that the contributions did not originate from a bank account or personal partnership interest that she controlled and that she was not a partner of Colfax Manor Associates. *Id.* She was, however, a partner in College Park Associates. *Id.* Furthermore, she confirmed that she first learned of the contributions when Mr. Zecher asked her to sign numerous attribution forms in the summer of 2001. *Id.* In contrast to Esther Schulder, Seth Kaplowitz subscribed to the consolidated response and refused to answer any questions regarding his knowledge of the contributions. Also, unlike

Ms. Schulder, Mr. Kaplowitz was not a partner of either entity that made contributions in his name, a fact acknowledged by Mr. Kaplowitz' attorney.⁴⁴ Attachment 3 at 2.

From the facts presented above, it is apparent that the Bradley Committee's correspondence refunding the excessive contributions were intercepted by Mr. Zecher and never forwarded to the intended recipients. As a result, it took over two years to transact the refunds. It is also possible that, had the individuals known of the contributions from the beginning, they would not have made contributions in violation of federal law.

Because Ms. Schulder did not have knowledge of and/or the requisite donative intent to make the contribution, this Office recommends that the Commission take no further action against Esther Schulder for making excessive contributions in violation of 2 U.S.C. § 441a(a). This Office also recommends no further action against Seth Kaplowitz, as he was not a partner of either contributing entity to the Bradley Committee.

b. Contributions in Excess of the Annual Limitation

Some of the individual respondents made political contributions on their own; and when these contributions were added to those made by Kushner Entities, their \$25,000 annual individual limitations were exceeded. An example of this situation is George and Barbara Gellert. According to the disclosure reports, George and Barbara Gellert made \$56,000 and \$30,000 in contributions, respectively, during the 2000 election cycle. Attachment 12. Of those amounts, only \$8,000 and \$2,000 in contributions, respectively, were not associated with Kushner Entities. *Id.* Thus, but for the partnership contributions attributed by Kushner

⁴⁴ The fact that Mr. Kaplowitz was not a partner of either partnership entity raises questions regarding the veracity of the statement he signed on June 7, 2001, at Scott Zecher's direction. Mr. Kaplowitz stated that the contributions were properly attributed to him as an equity owner and that his personal capital account was properly debited. Attachment 24 at 5. These assertions could not be true if Mr. Kaplowitz was not a partner of the contributing entities. The following non-partners also signed such statements at the direction of Scott Zecher: Bert Ghavami, Shellie Laulicht, Heywood Saland, Stuart-Gladstone, Barbara Gellert, George Gellert, Alan Hammer, and Leonard Witman. Attachment 26.

1 Companies to George and Barbara Gellert, the Gellerts would not have exceeded the annual
2 contribution limit.

3 Because the Gellerts were not partners, it is unlikely they were informed of the
4 partnership contributions. They were, therefore, powerless to ensure they did not exceed their
5 annual limitations. Although not partners, the Gellerts, along with others, were provided yearly
6 Schedule K-1 forms which Kushner Entities argue constituted sufficient notice.⁴⁵ Attachment 1
7 at 13. However, as noted earlier, the Schedule K-1 form does not include any reference to
8 political contributions. Attachment 13. Even if the K-1 forms included the information, we do
9 not have information showing that the Gellerts received the K-1 forms prior to making the direct
10 contributions. Therefore, the Gellerts and the other individuals receiving the K-1s were unlikely
11 to know that the forms reflected a contribution to the Bradley Committee or other political
12 committees. According to the Audit Division's review, the Capital Account Analyses,⁴⁶ rather
13 than the Schedule K-1 forms, confirm "that in most cases the contributions were charged to the
14 partner's capital account." Attachment 18 at 2. However, there is no evidence that the Kushner
15 Entities gave the partners the Capital Account Analyses.

16 In total, the Commission found reason to believe that 11 individuals—Barbara Gellert,
17 George Gellert, Charles Kushner, Dara Kushner, Jared Kushner, Murray Kushner, Rae Kushner,
18 Linda Laulicht, Pamela Laulicht, Mel Scheinerman and Richard Stadtmauer—exceeded the

⁴⁵ Although some individuals were non-partners, they nevertheless also received Schedule K-1 forms. *See supra* note 13. Also, according to the response, "As a result of the centralized management structure of these entities, some individual partners and members were aware of their Partnerships' contributions when they were made, while others were notified through the Schedule K-1 federal tax returns that reflected the expense." Attachment 1 at 13. Despite this Office's requests, Kushner Companies attorneys have not provided the names of those individuals who had knowledge of the contributions at the time they were made. Attachment 2.

⁴⁶ The Capital Account Analyses were produced by Kushner Entities for each partnership and reflect each partner's percentage of ownership, contributions, and distributions. Attachment 19 includes the Capital Accounts Analysis, the General Ledger, and K-1 Form of Rolling Gardens Associates. Attachment 19.

1 annual contribution limit for 2000. Counsel for respondents reviewed the aggregate contribution
2 amounts supplied in the Factual and Legal Analysis and stated that their records of the aggregate
3 contribution amounts were not consistent with the amounts cited by the Commission. Thus,
4 counsel requested that the Commission prepare documentation supporting the dollar amounts of
5 the alleged violations. This Office provided counsel with a listing of the contributions used to
6 calculate the amount of the violations. Attachments 15 and 16 at 8. In some instances, the
7 amounts were revised because contributions in non-election years were erroneously included:
8

Contributor	Original amount of 2 U.S.C. § 441a(a)(3) violation	Revised amount of 2 U.S.C. § 441a(a)(3) violation
Barbara Gellert	\$31,000	\$30,000
George Gellert	\$62,500	\$56,000
Charles Kushner	\$43,000	\$32,000 ⁴⁷
Dara Kushner	\$33,000	\$30,000
Jared Kushner	\$41,000	\$28,000
Murray Kushner	\$45,900	\$19,900
Rae Kushner	\$27,000	\$21,000
Linda Laulicht	\$49,000	\$33,000
Pamela Laulicht	\$27,000	\$27,000
Mel Scheinerman	\$35,000	\$29,000
Richard Stadtmayer	\$36,000	\$20,000 ⁴⁸

⁴⁷ The contribution list provided to Charles Kushner's counsel totaled \$35,000 and erroneously included two contributions made in the 2002 election cycle, as well as a contribution that had been refunded. The amount has been corrected, and the final total for Mr. Kushner is \$32,000. Furthermore, Counsel for Mr. Kushner provided a written response contesting the inclusion of some contributions. "Because Senator Lautenberg did not become a candidate in the 2000 general election, it is not clear how the Lautenberg 2000 Committee accounted for the general election contribution." Attachment 16 at 4. Counsel indicated that a re-designation of the general election contribution to a prior campaign would reduce Mr. Kushner's violation by \$1,000. Similarly, Counsel claims that Mr. Kushner's \$9,000 contribution to the Democratic National Committee was incorrectly designated to the DNC's federal account. Counsel stated that Mr. Kushner has alerted the DNC and requested a refund. Attachment 16. Counsel has failed to provide any documentary evidence showing that Mr. Kushner's contribution was not originally intended for the DNC's federal account. This Office views any redesignations at this stage as insufficient proof of intent.

⁴⁸ The contribution list provided to Richard Stadtmayer's counsel totaled \$23,000 and erroneously included three contributions made in the 2002 election cycle. The amount has been corrected, and the final total for Mr. Stadtmayer is \$20,000.

Under the revised totals, it appears that respondents Murray Kushner, Rae Kushner and Richard Stadtmauer did not exceed their annual contribution limits. Therefore, this Office recommends taking no further action against them regarding this violation. This Office also recommends no further action against George and Barbara Gellert, as they were not partners of the contributing entities to the Bradley Committee.⁴⁹ This Office recommends that the Commission enter into pre-probable cause conciliation with Dara Kushner, Jared Kushner, Linda Laulicht, Pamela Laulicht, Mel Scheinerman, and Charles Kushner for exceeding their contribution limit for the 2000 election cycle.⁵⁰

B. Coordinator Liability

1. Contributions in the Name of Another

As noted earlier, the Kushner Entities did not attribute contributions in direct proportion to the partner's share of profits, did not obtain the agreement of the partners, and failed to present evidence that contributions were deducted from partner profits. 11 C.F.R. § 110.1(e). The lack of the partners' knowledge of the contributions resulted in non-partner contributions, contributions in excess of the election cycle limitation, and contributions in excess of the annual limitation. In some cases, the funds for the contributions may have originated from partnership funds; in other cases, contributions were made entirely from and/or subsidized with corporate funds. By attributing contributions to individuals without their knowledge, Charles Kushner, Scott Zecher, and the Kushner Entities made contributions in the name of another in violation of 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1).

⁴⁹ See *supra* note 13 and accompanying text.

⁵⁰ These individuals subscribed to the consolidated response. If they respond to the questionnaires, as previously requested, or provide declarations stating they had no knowledge of the contributions in their names, this Office would recommend that the Commission take no further action against them, consistent with our treatment of other individuals so situated. See *supra* notes 14 and 16, and discussion at section IV.A.2.

2. Corporate Contributions

The Commission found reason to believe that Kushner Companies and its officers and managers (Mr. Charles Kushner, Mr. Scott Zecher, Mr. Jeffrey Freireich, and Mr. Richard Stadtmauer) made corporate contributions.

From our investigation, it is clear that the Kushner Entities issued contribution checks without the knowledge of the partners, and that those contributions were forwarded to the Bradley Committee by the Kushner Companies. It also appears that the contribution checks listed 40 different corporate names above the signature line and all of the checks appear to have been signed by the same person.⁵¹ Also, various Kushner Entities that were limited liability companies with corporate managing partners made political contributions;⁵² and the inclusion of corporate managing partners made these contributions *per se* illegal.⁵³ See Advisory Opinions ("AO") 1998-15, 1997-17, 1997-4.

⁵¹ In response to our request for documents, respondents stated that, "The Kushner Companies, Inc. is not an operating corporation and did not maintain a bank account at the time of the contributions listed on Attachment B. However, bank records of the associated partnerships are being reviewed and all relevant bank records will be produced." Attachment 4 at 14. To date, this Office has not received any bank records from Kushner partnership or corporate entities. "Kushner Entities" refers to all Kushner partnership and corporate entities other than Kushner Companies, Inc.

⁵² The following limited liability companies with corporate managing partners made political contributions to the Bradley Committee: 135 Montgomery Associates L.L.C. (Montgomery Developers Corp.), Colfax Manor Associates L.L.C. (Colfax Manor Corp.), Constantine Village Associates L.L.C. (Constantine V. Corp.), Dara Building Associates L.L.C. (Dara Building Corp.), Hackettstown Square Associates L.L.C. (Hackettstown Associates Corp.), Madison/64th Properties L.L.C. (Madison/64th Properties, Inc.), Oakwood Apartments L.L.C. (Oakwood G. Corp.), Q.E.M. Associates L.L.C. (Q.E.M. Corp.), Randolph Realty Associates L.L.C. (Randolph Building Corp.), Riverside Park Industrial Associates L.L.C. (Riverside Associates, Inc.), Rolling Gardens Associates L.L.C. (Rolling Gardens Developers Corp.), and Sixty Six West Associates L.L.C. (66 W.M.P. Corp.).

⁵³ The contributions at issue were made on June 16 and 17, 1999, approximately one month before the new regulations governing limited liability companies went into effect. Under the new regulations, a contribution by a limited liability company is permissible, and is treated like a partnership contribution, unless the company elects tax treatment as a corporation. See 11 C.F.R. § 110.1(g)(2). Before the effective date of these regulations, the participation of even one corporation in the limited liability company would taint all contributions from the company as unlawful. See AOs 1998-15, 1997-17, 1997-4.

Therefore, Charles Kushner, Scott Zecher, and Kushner Entities made prohibited corporate contributions in violation of 2 U.S.C. § 441b(a); 11 C.F.R. §§ 114.2(a), 114.2(f). However, because there is no direct evidence of the involvement of Mr. Jeffrey Freireich and Mr. Richard Stadtmayer, managers of Kushner Companies, in the making of corporate contributions, this Office recommends taking no further action against these individuals with regard to the making of corporate contributions. Also, our investigation did not uncover any evidence of direct contributions from Kushner Companies either to the committees or to partners as reimbursement. Therefore, this Office cannot recommend further action under 2 U.S.C. § 441b against Kushner Companies. As discussed below, our investigation does demonstrate that the Kushner Companies was engaged in corporate facilitation.

3. Corporate Facilitation

The Commission found reason to believe that Kushner Companies and its officers and managers (Mr. Charles Kushner, Mr. Scott Zecher, Mr. Jeffrey Freireich, and Mr. Richard Stadtmayer) facilitated the making of contributions and acted as corporate conduits. This finding was based on several factors. First, the contributions to the Bradley Committee were transmitted on corporate checks and stationary on June 16 and 17, 1999. Second, corporate officers, such as Mr. Charles Kushner and Mr. Scott Zecher, used corporate resources to direct the making of the contributions. Finally, Kushner Companies facilitated contributions from limited liability companies that were *per se* illegal.

The evidence gathered during our investigation indicates that Mr. Zecher played an important role in collecting and forwarding partner contributions. 11 C.F.R. § 114.2(f)(2). He was the Chief Operating Officer of Kushner Companies, although he claims that his true

1 employer is Westminster Management LLC.⁵⁴ Attachments 10 and 11. Although Mr. Zecher
2 denies any involvement with Kushner Companies prior to August 1999, he signed the letter on
3 Kushner Companies' letterhead, dated June 17, 1999, forwarding the contributions to the Bradley
4 Committee, and also to many other political committees. Attachments 10, 11, and 20. Mr.
5 Zecher also participated in the "corporate" conference on January 19, 1999, where Senator
6 Bradley spoke.⁵⁵ Attachment 8 at 1. After the fact, he was also involved in obtaining attribution
7 statements from partners and non-partners regarding many contributions to numerous political
8 committees. Attachments 6, 21, and 26. According to 11 C.F.R. § 114.2(f)(2), the use of
9 corporate resources in conducting such activities as described above constitutes corporate
10 facilitation.

11 Mr. Charles Kushner used corporate resources to make contributions to numerous
12

⁵⁴ According to Kushner Companies' website (visited Oct. 31, 2003) <<http://www.kushnercompanies.com>>, Westminster Management LLC, of which Charles Kushner is President, is the property management division of Kushner Companies:

The strength of the Property Management Division, Westminster Management LLC, ensures the Company's continued long-term growth and profitability. The division, which manages more than 22,000 apartment units, ranging from traditional garden apartment complexes to New York City waterfront views and high-rises, continually examines its portfolio of properties to determine opportunities to increase income, cut costs, and improve efficiencies. In addition to apartment units, this group also manages office buildings, retail shopping centers, and industrial complexes. The division employs an active, hands-on management style. Marketing, pricing, tenant relations, amenities, maintenance, and other management issues are carefully studied to ensure that property operations remain on-track. Economies of scale are employed to reduce operating costs, and benchmark performance ratings are applied across the portfolio to maintain quality.

The management contracts provided along with the subpoenaed information revealed that the following entities had management contracts with Westminster Management LLC: 75 Montgomery Associates LLC, Bruckner Plaza Associates LP, Constantine Village Associates LLC, East Brunswick Corporate Center Associates, Edgewater Apartments Associates, Quail Ridge Associates, General Village Associates, Glen Ellen Associates LP, New Puck LP, Oakwood Garden Developers, Pheasant Hollow Associates, Q.E.M. Associates LLC, Riverside Park Industrial Associates LLC, Rolling Garden Associates LLC, Seven S.L.P. Associates and Wallkill Apartment Associates.

⁵⁵ -On January 19, 1999, Senator Bill Bradley spoke at the "Kushner Companies 1999 Corporate Retreat" on the topic of "Kushner Companies' Role in the Political Arena." Attachment 8 at 4.

1 political committees from partnership funds without the knowledge of numerous partners. These
2 so-called political services, performed without partner assent or pursuant to partnership
3 agreements, and in violation of 11 C.F.R. § 110.1(e), cannot be considered commercial
4 transactions in the ordinary course of business. The means used to make contributions, such as
5 using corporate letterhead and envelopes, are considered examples of facilitation under 11 C.F.R.
6 § 114.2(f)(2). By planning, organizing, and carrying out political fundraising projects using
7 corporate resources, Mr. Charles Kushner, Mr. Scott Zecher, and Kushner Companies facilitated
8 the making of partnership and/or corporate contributions.

9 Despite Mr. Zecher's activities, Kushner Companies denies using corporate assets to
10 engage in political fundraising activities. Attachment 4 at 7. The consolidated response argues
11 that the services provided and the political checks issued were, in fact, commercial services in the
12 ordinary course of its business. Attachment 1 at 31. The consolidated response cites MUR 2557
13 (Bayco) for the proposition that corporations may perform political management services on
14 behalf of partnerships. *Id.* However, unlike our situation, MUR 2557 involved contributions
15 under 11 C.F.R. § 110.1(e)(1) (contributions attributed in direct proportion to the partner's
16 share). Furthermore, in MUR 2557, the Commission found reason to believe that a violation
17 occurred because the Committee failed to determine the individual partners' share of the
18 contributions under section 110.1(e)(1).

19 Although Scott Zecher gathered and forwarded partnership contributions to committees
20 and requested attribution statements from individual partners, it appears that Charles Kushner,
21 and not Mr. Zecher, controlled the amount, timing, and intended recipients of the contributions.
22 See Attachment 1 at 12 and Attachment 25. Therefore, this Office recommends not charging the
23 partnership contributions to Mr. Zecher's individual contribution limit.

1 **4. Corporate Status of Kushner Companies**

2 Kushner Companies, in its consolidated response, states it was an inactive corporation
3 that had allowed its corporate registration to lapse in 1995,⁵⁶ and that it held no assets, earned no
4 income, employed no personnel, and paid no taxes. Attachment 1 at 29 and Attachment 7.
5 Because the contributions to the Bradley Committee were made during a period of lapsed
6 corporate registration, the consolidated response argues that the contributions to the Bradley
7 Committee were not corporate contributions and there could be no corporate facilitation.

8 Under state or federal law, a temporary lapse in corporate registration would not prevent
9 Commission action against Kushner Companies. Pursuant to New Jersey law, a reinstatement of
10 corporate status "relates back to the date of issuance of the proclamation revoking the certificate
11 of incorporation or the certificate of authority and *shall validate all actions taken in the interim.*"
12 N.J. Stat. § 14A:4-5(7) (2002) (emphasis added). *See also, Asbestos Workers Local Union No.*
13 *32 v. Shaughnessy*, 703 A.2d 276 (N.J. Sup. Ct. 1997) (corporate officers signed contract on
14 behalf of corporation while charter was suspended; court determined it unnecessary to hold
15 officers personally liable because reinstatement provision included validation of actions taken
16 during revocation period).

17 The Act states that it is unlawful for any corporation to make a contribution or
18 expenditure in connection with a federal election. 2 U.S.C. § 441b(a). Because Section 441b(a)
19 does not distinguish between "active" and "inactive" corporate status, Kushner Companies is a
20 corporation subject to the Act's prohibitions. Moreover, because reinstatement of Kushner
21 Companies' charter on April 30, 2001 is retroactive, and it validates all intervening actions by the
22 corporation, its officers cannot contend that the corporation is not liable for the facilitation of

⁵⁶ Kushner Companies was reinstated as a corporation in good standing on April 30, 2001. Attachment 7 at 3.

1 contributions and for the direct contributions made to the Bradley Committee in 1999. While
2 Kushner Companies active status may have lapsed, it is clear that, at all times, it operated as a
3 corporation. Therefore, any lack of "active" corporate status on the part of Kushner Companies
4 at the time the contributions were made does not prevent the Commission from taking further
5 action to remedy the violation of 2 U.S.C. § 441b(a).

6 5. Conduit Liability

7 Charles Kushner, Kushner Companies, and Kushner Entities concede that Mr. Charles
8 Kushner possessed "full, exclusive and complete" discretion as the managing partner of the vast
9 majority of the partnerships.⁵⁷ Attachment 1 at 10. The investigation establishes that Charles
10 Kushner exercised "direction and control" over the amount, timing, and intended recipient of the
11 contributions, within the meaning of the Commission's conduit regulation.⁵⁸ 11 C.F.R.
12 § 110.6(d)(2). The mass production and delivery of identical checks to particular candidates on
13 the same dates clearly indicate "direction and control." Respondents admit Mr. Charles Kushner
14 exercised "direction and control" by stating in the consolidated response that contributions "were
15 made as a result of Charles Kushner's view as manager, pursuant to the broad grant of authority
16 and discretion conferred by the operating agreements and in consultation with his colleagues, that
17 contributions to particular federal, state, and local candidates would be useful to the public
18 standing and visibility of the Partnerships and the partners." Attachment 1 at 12.

19 Mr. Kushner's role as a conduit is also confirmed by numerous letters from various
20

⁵⁷ *See supra* note 3.

⁵⁸ "In the past, the Commission has considered such factors as whether the conduit controlled the amount and timing of the contribution, and whether the conduit selected the intended recipient." *Explanation and Justification for 11 C.F.R. § 110.6*, 54 Fed. Reg. 34,108 (Aug. 17, 1989).

committees thanking Mr. Kushner and Mr. Zecher for providing the contributions. Attachment 25. Mr. Kushner's exercise of direction and control as a conduit for partner funds leads to the conclusion that the political contributions made in the names of 40 individuals during the 2000 election cycle in the amount of \$508,900 are subject to his individual contribution limitation.⁵⁹ Therefore, Mr. Charles Kushner made excessive contributions in violation of 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.6(d)(2).

C. Bradley Committee Liability

The Bradley Committee submitted a detailed response presenting facts about which this Office and the Audit Division were not previously aware. Attachment 5. For instance, we did not know that an initial batch of Kushner Companies contributions was actually returned in February 1999, and that discussions subsequently occurred between the Bradley Committee, its legal counsel Perkins Coie LLP, and Kushner Companies regarding the legality of the contributions. *Id.* at 2.

Although it gives new information, the response does not present documentary evidence to support the claim that the Bradley Committee used best efforts to determine the legality of the contributions and that it submitted the required contributor information. 11 C.F.R. §§ 103.3(b)(1), 104.7(a).

The chronology of events presented by the response indicates that the Kushner Entities and Kushner Companies were able to convince the Bradley Committee that the June 1999 contributions were bona fide partnership contributions rather than corporate contributions. However, the response does not fully explain the rationale that prompted the Bradley Committee

⁵⁹ The amount of \$508,900 is derived from the total contributions to all political committees during the 2000 election cycle attributed to the 40 Bradley contributors by Kushner Companies. *See infra* note 65. Documents submitted by Kushner Companies demonstrate that the contributions were also made using the same method.

1 to reject the February 1999 contributions and eventually accept the June 1999 contributions. The
2 response notes that "Mr. Zecher advised that the affected partners declined to sign a letter
3 authorizing the contributions, despite the fact that each had signed a partnership agreement that
4 granted the managing partner the authority to take actions for partners without their signature."
5 Attachment 5 at 3. If, at the time it accepted the contributions, the Bradley Committee
6 understood that some of the partners were unaware of the contributions,⁶⁰ it also knowingly
7 accepted contributions made in the name of another. 11 C.F.R. § 110.4(b)(1)(iv). Therefore, this
8 Office recommends pre-probable cause conciliation with the Committee for the purpose of
9 obtaining a civil penalty or clarification that the Bradley Committee did not know that the
10 partners were unaware of the contributions.

11 **V. SUMMARY OF RECOMMENDATIONS**

12 The Office of General Counsel recommends that the Commission take the actions
13 outlined in the chart on the next page:

(i.e., printed corporate checks, with the same signature, transmitted via corporate letterhead on the same day).
See Attachment 20.

⁶⁰ According to the Bradley Committee response, Bradley Committee representatives discussed the legality of accepting Kushner-derived contributions with Kushner Companies Chief Operating Officers, Brian Bentzlin and Scott Zecher prior to their delivery on June 22, 1999. Attachment 5 at 2. However, the response does not indicate whether Kushner Companies informed the Bradley Committee that it could accept the contributions without partner signatures because partner knowledge is unnecessary.

Type of Activity	Actors	Action Recommended	Violation/Citation
PARTNER CONTRIBUTIONS			
• Non-Partner Contributions	Bert Ghavami, Seth Kaplowitz, Shellie Laulich, Heywood Saland, Stuart Gladstone, Barbara Gellert, George Gellert, Alan Hammer and Leonard Witman.	No Further Action	Knowingly Permit Use of Name to make contributions in the Name of Another 2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(ii)
• Partners signing "no knowledge" declarations	Abby Jo Ages, Bernard Eichler, Jonathan Kushner, Marc Kushner, Murray Kushner, Gene Schenkman, Mark Schenkman, Esther Schuller, Jacob Schuller, Jessica Schuller Orbach, Ruth Schuller, Melissa Serwitz, Ralph Tawil, Jr. and Ralph Tawil, Sr..	No Further Action	Knowingly Permit Use of Name to make contributions in the Name of Another 2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(ii)
• Partners refusing to sign "after the fact" attributions	Edith Wulack.	No Further Action	Knowingly Permit Use of Name to make contributions in the Name of Another 2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(ii)
Partners Contributors who: • Subscribed to consolidated response • Refused to answer knowledge questions • Signed "after the fact" attributions	Richard Stadtmayer, Jeffrey Freireich, Melvin Gebroe, Morris Hammer, Dara Kushner, Joshua Kushner, Nicole Kushner, Rae Kushner, Linda Laulich, Pamela Laulich, Mel Scheinerman, Steven Silverman, John Sims, and Alex Tarapchak.	Pre-Probable Cause Conciliation	Knowingly Permit Use of Name to make contributions in the Name of Another 2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(ii)
ANNUAL CONTRIBUTION LIMITS			
• Contributions in excess of the annual limitation (> \$25,000)	Charles Kushner, Dara Kushner, Jared Kushner, Linda Laulich, Pamela Laulich and Mel Scheinerman.	Pre-Probable Cause Conciliation	Exceeding the Annual Limitation 2 U.S.C. § 441a(a)(3) 11 C.F.R. § 110.5(b)
• Contributions within the annual limitation (> \$25,000)	Murray Kushner, Rae Kushner and Richard Stadtmayer.	No Further Action	Exceeding the Annual Limitation 2 U.S.C. § 441a(a)(3) 11 C.F.R. § 110.5(b)
• Non-partner contributions	George Gellert, Barbara Gellert.	No Further Action	Exceeding the Annual Limitation 2 U.S.C. § 441a(a)(3) 11 C.F.R. § 110.5(b)

1

Type of Activity	Actors	Action Recommended	Violation/Citation
CONTRIBUTIONS IN THE NAME OF ANOTHER			
<ul style="list-style-type: none"> Contributions attributed to individuals without their knowledge Partnership Contributions not attributed either in direct proportion to partners profits, or By agreement of partners 	Kushner Companies, Charles Kushner	Pre-Probable Cause Conciliation	In the Name of Another 2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(i)
<ul style="list-style-type: none"> Forwarding contributions in name of partners without their knowledge 	Scott Zecher, 40 Associated Partnerships	Pre-Probable Cause Conciliation	Knowingly Assist in the Name of Another 2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(iii)
CORPORATE CONTRIBUTIONS			
Source of funds: <ul style="list-style-type: none"> Contributions by limited liability companies "Reimbursement" of partner capital accounts 	Charles Kushner and Scott Zecher	Pre-Probable Cause Conciliation	Corporate Contributions 2 U.S.C. § 441b(a) 11 C.F.R. § 114.2(a)
Facilitation: <ul style="list-style-type: none"> Forwarding contributions and gathering attribution statements Use of corporate checks/stationery 	Kushner Companies, Charles Kushner and Scott Zecher	Pre-Probable Cause Conciliation	Facilitation of Contributions 11 C.F.R. § 114.2(f)
Conduit: <ul style="list-style-type: none"> Exercise of direction and control of partnership funds 	Kushner Companies, Charles Kushner and Scott Zecher	Pre-Probable Cause Conciliation	Corporate Conduit 11 C.F.R. § 110.6(b)(2)(ii)
<ul style="list-style-type: none"> No evidence of involvement 	Richard Stadmauer, Jeffrey Freireich	No Further Action	Corporate Contributions 2 U.S.C. § 441b(a) 11 C.F.R. § 114.2(a) Facilitation of Contributions 11 C.F.R. § 114.2(f) Corporate Conduit 11 C.F.R. § 110.6(b)(2)(ii)

2
3
4

2025 SEP 10 10:12

Type of Activity	Actors	Action Recommended	Violation/Citation
EXCESSIVE CONTRIBUTIONS			
• Conduit political contributions totaling \$508,900	Charles Kushner	Pre-Probable Cause Conciliation	Excessive Contributions 2 U.S.C. § 441a(a) 11 C.F.R. § 110.6(d)(2)
RECEIPT OF CONTRIBUTIONS			
Corporate Contributions:	Bill Bradley for President, Inc., and Theodore V. Wells, as Treasurer	Pre-Probable Cause Conciliation	Accepted Corporate Contributions 2 U.S.C. § 441(b)(a) 11 C.F.R. § 114.2(d)
• Awareness of source of funds			
Contributions in the Name of Another:	Bill Bradley for President, Inc., and Theodore V. Wells, as Treasurer	Pre-Probable Cause Conciliation	Knowingly accepted contributions in Name of Another 2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(iv)
• Awareness of lack of contributor knowledge			
• Awareness of partner/non-partner status and duty to report contributor information	Bill Bradley for President, Inc., and Theodore V. Wells, as Treasurer	Pre-Probable Cause Conciliation	Failed to Report all Contributor Information 2 U.S.C. § 434(b)(3)(A)

VI. PROPOSED CONCILIATION AND CIVIL PENALTY

24.04.403.222

PAGES 41 THRU 45 HAVE BEEN DELETED

VII. RECOMMENDATIONS

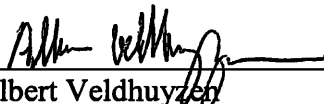
1. Enter into pre-probable cause conciliation with Kushner Companies and associated partnerships as identified in Appendix 1.A.
2. Enter into pre-probable cause conciliation with certain individuals as identified in Appendix 1.B.
3. Enter into pre-probable cause conciliation with Bill Bradley for President, Inc., and Theodore V. Wells, as Treasurer.
4. Take no further action with respect to certain individuals identified in Appendix 1.C.
5. Approve the attached proposed Conciliation Agreements.
6. Approve the appropriate letters.

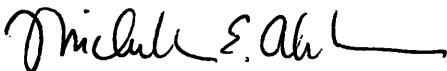
11/5/03
Date

Lawrence H. Norton (by JMC)
Lawrence H. Norton
General Counsel

Gregory R. Baker
Gregory R. Baker
Acting Associate General Counsel

Lorenzo Holloway
Lorenzo Holloway
Assistant General Counsel


Albert Veldhuyzen
Attorney


Michelle E. Abellera
Attorney

Attachments:

1. Consolidated Response of Certain Respondents to "Reason to Believe."
2. Letters from Albert Veldhuyzen to Mr. Bauer and Baran, dated Oct. 3, 2002.
3. Letter from Robert F. Bauer to Albert Veldhuyzen, dated Oct. 25, 2002.
4. Letters/documents from Mr. Baran to Albert Veldhuyzen.
5. Letter from Peter Nichols to Larry Norton, dated Sept. 11, 2002.
6. Letters/Affidavits from Respondents.
7. State of New Jersey incorporation certificates.
8. Kushner Companies Corporate Retreat Agenda.
9. DNC Donor Card.
10. Letter from Scott Zecher to Peter Nichols, dated June 17, 1999.
11. Declaration of Scott Zecher.
12. Barbara and George Gellert 2000 cycle contributions.
13. Barbara and George Gellert 1999 Schedule K-1 forms.
14. Westminster Management Associates General Ledger.
15. Letter from Michelle Abellera to Robert F. Bauer, dated Nov. 26, 2002.
16. Letter from Jan Baran to Larry Norton, dated Oct. 28, 2002.
17. Charles Kushner 2000 cycle contributions in the name of another.
18. Audit Division Analysis of Kushner Materials.
19. Capital Accounts Analysis, General Ledger, K-1 Form of Rolling Gardens Assoc.
20. Letters from Scott Zecher to various political committees.
21. Attribution Statements signed by Mark Schenkman and Abby Jo Ages.
22. Investigative Report and Correspondence related to Edith Wulack.
23. Correspondence and Attribution Forms related to Esther Schulder.
24. Correspondence and Attribution Forms related to Seth Kaplowitz.
25. Committee "thank you" letters to Mr. Kushner and Mr. Zecher.
26. Attribution Statements signed by non-partners.
27. Conciliation Agreement to Kushner Entities.
28. Conciliation Agreement to Mr. Charles Kushner.
29. Conciliation Agreement to Mr. Scott Zecher.
30. Conciliation Agreement to partner respondents.
31. Conciliation Agreement to Bradley Committee.

Appendix 1

A. "Associated partnerships" consist of the following:

135 Montgomery Associates, 836 Avenue Associates, BP Developers, L.P., Brick Building Associates, L.P., Bruckner Plaza Associates, Colfax Manor, L.P., College Park Associates, L.P., Constantine Village Associates, Dara Building Associates, L.P., East Brunswick Corporate Center, Edgewater Apartments Associates, L.P., Elmwood V. Associates, L.P., General Green Village Associates, Glen Ellen Associates, L.P., Hackettstown Square Associates, Harbor Island Realty Associates, L.P., Kent Gardens Associates, Kushner Seiden Madison 64th, L.P., LMEC Associates, L.P., Millburn Associates, L.P., Montgomery Associates, Mt. Arlington Apartments Associates, L.P., New Puck, L.P., Oakwood Garden Developers, L.P., Pheasant Hollow Associates, Pitney Farms Associates, L.P., Q.E.M. Associates, L.P., Quail Ridge Associates, L.P., Randolph Building Associates, L.P., Reike, L.P., Riverside Park Industrial Associates, L.P., Rolling Gardens Associates, Seven S.L.P. Associates, L.P., Sixty Six West Associates, Sod Farms Associates, L.P., Sparta Building Associates, L.P., Township Associates, Wallkill Apartments Associates, L.P., West Brook Associates, L.P. and Westminster Sales & Marketing, L.P.

B. "Preprobable cause conciliation with certain individuals" consist of the following:

Mr. Charles Kushner, Scott Zecher, Richard Stadtmauer*, Jeffrey Freireich*, Melvin Gebroe, Morris Hammer, Dara Kushner, Jared Kushner#, Joshua Kushner, Nicole Kushner, Rae Kushner*, Linda Laulicht, Pamela Laulicht, Mel Scheinerman, Steven Silverman, John Sims, and Alex Tarapchak.

C. "No further action with respect to certain individuals" consist of the following:

Abby Jo Ages, Bernard Eichler, Jonathan Kushner, Marc Kushner, Murray Kushner, Rae Kushner#, Gene Schenkman, Mark Schenkman, Esther Schulder, Jacob Schulder, Jessica Schulder Orbach, Ruth Schulder, Melissa Serwitz, Ralph Tawil, Jr., Ralph Tawil, Sr., Bert Ghavami, Seth Kaplowitz, Shellie Laulicht, Heywood Saland, Stuart Gladstone, Barbara Gellert, George Gellert, Alan Hammer, Leonard Witman, Edith Wulack, Richard Stadtmauer#^ and Jeffrey Freireich^.

* (with respect to violations involving contributions in the name of another)

(with respect to violations involving the annual contribution limitation)

^ (with respect to violations involving corporate contributions, facilitation of corporate contributions and corporate conduits)

Appendix 2

On June 26, 2002, the Commission made reason to believe findings against the following entities and individuals:

Violation	Citation	Entity/Individual
Corporate Contributions	2 U.S.C. § 441b(a) 11 C.F.R. § 114.2(a)	Kushner Companies, Charles Kushner, Scott Zecher, Richard Stadtmauer, Jeffrey Freireich
Corporate Conduit	11 C.F.R. § 110.6(b)(2)(ii)	Kushner Companies, Charles Kushner, Scott Zecher, Richard Stadtmauer, Jeffrey Freireich
Facilitation of Contributions	11 C.F.R. § 114.2(f)	Kushner Companies, Charles Kushner, Scott Zecher, Richard Stadtmauer, Jeffrey Freireich
In the Name of Another	2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(i)	Kushner Companies, Charles Kushner
Knowingly Assist in the Name of Another	2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(iii)	Scott Zecher, 40 Associated Partnerships
Knowingly Permit Use of Name to make contributions in the Name of Another	2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(ii)	Richard Stadtmauer, Jeffrey Freireich, Abby Jo Ages, Bernard Eichler, Melvin Gebroe, Barbara Gellert, George Gellert, Bert Ghavami, Stuart Gladstone, Alan Hammer, Morris Hammer, Seth Kaplowitz, Dara Kushner, Jonathan Kushner, Joshua Kushner, Marc Kushner, Murray Kushner, Nicole Kushner, Rae Kushner, Linda Laulicht, Pamela Laulicht, Shellie Laulicht, Heywood Saland, Mel Scheinerman, Gene Schenkman, Mark Schenkman, Esther Schulder, Jacob Schulder, Jessica Schulder, Ruth Schulder, Melissa Serwitz, Steven Silverman, John Sims, Alex Tarapchak, Ralph Tawil, Jr., Ralph Tawil, Sr., Leonard Whitman, Edith Wulack
Excessive Contributions	2 U.S.C. § 441a(a) 11 C.F.R. § 110.6(d)(2)	Charles Kushner
Exceeding the Annual Limitation	2 U.S.C. § 441a(a)(3) 11 C.F.R. § 110.5(b)	Barbara Gellert, George Gellert, Charles Kushner, Dara Kushner, Jared Kushner, Murray Kushner, Rae Kushner, Linda Laulicht, Pamela Laulicht, Mel Scheinerman, Richard Stadtmauer
Accepted Corporate Contributions	2 U.S.C. § 441(b)(a) 11 C.F.R. § 114.2(d)	Bill Bradley for President, Inc., and Theodore V. Wells, as Treasurer
Knowingly accepted contributions in Name of Another	2 U.S.C. § 441f 11 C.F.R. § 110.4(b)(1)(iv)	Bill Bradley for President, Inc., and Theodore V. Wells, as Treasurer
Failed to Report all Contributor Information	2 U.S.C. § 434(b)(3)(A)	Bill Bradley for President, Inc., and Theodore V. Wells, as Treasurer

24-04-405-2631