FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 2 9 2004

Jan Witold Baran, Esq.
Wiley Rein Fielding LLP
1776 K Street, NW
Washington, DC 20006

RE: MUR 5279
Charles Kushner
40 Associated Partnerships

Dear Mr. Baran:

On June 22, 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 and 11 C.F.R. § 110.1(e)(2), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and its implementing regulations. 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 and a copy of the Statements of Reasons issued in connection with this matter. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Kathleen Dutt
Attorney

Enclosure
Conciliation Agreement
Statements of Reasons

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Charles Kushner &	)	MUR 5279
40 Associated Partnerships	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. In June of 2002, the Commission found reason to believe that Charles Kushner and 40 Associated Partnerships managed by Mr. Kushner,[1] (collectively "the Respondents"), as well as other entities and individuals (including the Kushner Companies, certain officers of the Kushner Companies, and various individuals represented to be partners in the 40 Associated Partnerships to whom certain partnership contributions were attributed), violated provisions of the Federal Election Campaign Act ("the Act"), including 2 U.S.C. §§ 441a, 441b, and 441f, and provisions of the Commission regulations which implement the Act, in connection with numerous federal political contributions made between 1999 and 2000.

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[1] The 40 Associated Partnerships include the following entities: 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.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe by the Commission, and in order to resolve all issues relating to Respondents, various associated entities, their management and personnel, and individual partners, 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:[2]

Background

1. Charles Kushner is a New Jersey businessman who operates numerous privately-held real estate and business entities, including the 40 Associated Partnerships, which are held out to the public as being associated with the Kushner Companies, a New Jersey corporation with offices in Florham Park, New Jersey and New York City, New York. Mr. Kushner is Chairman of Kushner Companies, which serves as a trade-name for other privately-held associated business entities, and, at all relevant times, had no corporate assets or funds of its own.

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[2] All of the facts recounted in this agreement 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 Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act 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. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

2. The 40 Associated Partnerships include partnerships or limited liability companies that have elected to be treated as partnerships for tax purposes and are registered to do business in the State of New Jersey. Each of the 40 Associated Partnerships owns and/or operates real estate enterprises. Charles Kushner serves or functions as the managing partner or President of a managing entity in the 40 Associated Partnerships. Mr. Kushner also has a substantial direct or indirect equity interest in each of the partnerships.

3. Many of the 40 Associated Partnerships included one partner that was a corporate entity controlled by Charles Kushner, as well as varying numbers of other partners who might include partnerships, natural persons and trusts for minor children of Charles Kushner or other family members. Many of the individual partners are relatives, employees, business associates or friends of Charles Kushner.

4. The partnerships operate pursuant to a formal written agreement which vests broad management, decision-making and financial authority in the managing partner. In most cases, the agreement appoints the managing partner to serve as each individual partner's attorney-in-fact with legal authority to consent to business and financial matters on the individual partner's behalf.

Applicable Law

5. A partnership is a "person" under the Act and thus may make federal political contributions. 2 U.S.C. §§ 431(11).

6. The Act prohibits any person from making contributions in excess of $1,000 per candidate per federal election. 2 U.S.C. §§ 441a(a)(1). The Act prohibits any person from

making federal political contributions totaling in excess of $25,000 per calendar year. 2 U.S.C. § 441a(a)(3).

7. Commission regulations implementing 2 U.S.C. § 441a require that all partnership contributions are treated as counting towards both the contribution limit of the partnership and the specific partners to whom portions of the contribution are attributed under 11 C.F.R. § 110.1(e). The dual attribution of partnership contributions can be accomplished in one of two ways:

A) Under 11 C.F.R. § 110.1(e)(1), a partnership contribution can be dually attributed in pro rata fashion to each partner in direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate. This option, however, is not available to any partnership that includes a partner, such as an incorporated entity, that is prohibited from making contributions under the Act.

B) Under 11 C.F.R. § 110.1(e)(2), a partnership contribution also can be dually attributed in a non pro rata fashion:

> By agreement of the partners, as long as –
>
> (i) Only the profits of the partners to whom the contributions is attributed are reduced (or losses increased), and
>
> (ii) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.
>
> A contribution by a partnership shall not exceed the limitations on contributions in 11 CFR 110.1 (b), (c) and (d). No portion of such contributions may be made from the profits of a corporation that is a partner. (emphasis added).

Partnership Political Contributions

8. Between 1999-2000, the 40 Associated Partnerships, which were the focus of the Commission's broader investigation, made approximately $540,900 in federal political contributions to various federal candidates, national party committees and nonconnected political committees. Respondents maintain that these and other political contributions made over a period of several years by the 40 Associated Partnerships and associated entities were part of an effort to build public good will, brand the partnerships and associated entities as well as to enhance the broader communities in which they operate. Respondents advised recipient political committees that 100% of each partnership contribution should be dually attributed to a partnership and a single individual, who was represented to be a partner in the contributing partnership. During 1999-2000, approximately $32,000 of these partnership contributions was attributed to Charles Kushner, with the remaining $508,900 in contributions attributed to various other individuals.

9. Charles Kushner selected federal political committees that would receive partnership contributions and determined the aggregate amount of the political contribution. Mr. Kushner would provide this information to Kushner Companies management personnel. Subject to Mr. Kushner's approval, these management personnel would identify the specific partnerships that would make the contributions and then attempt to identify specific individual partners to whom they believed 100% of each partnership contribution would and could be dually attributed.

10. The partnership political contributions generally were made via computer-generated checks for each partnership that were drafted at Kushner Companies headquarters. Each check listed the address of that partnership as the same address as Kushner Companies

Headquarters, and were signed by Charles Kushner. The checks were forwarded to political committees via correspondence on Kushner Companies letterhead along with a list of individuals represented to be partners to whom the contributions should be dually attributed.

11. It was not feasible for the partnerships to dually attribute the contributions to all partners on a purely pro rata basis under 11 C.F.R. § 110.1(e)(1) because many of the 40 Associated Partnerships included at least one partner that was a corporate entity. Instead, it was the general practice of Respondents to attribute 100% of each contribution made from partnership funds to the partnership and a single individual partner in that partnership under 11 C.F.R. § 110.1(e)(2).

12. Most of the partners to whom contributions were attributed did not receive prior or contemporaneous notifications as to the specific attribution of any specific political contribution to their personal contribution limit. Respondents maintain that 11 C.F.R. § 110.1(e) does not explicitly mention or require prior or contemporaneous notice of partner attributions. All partners, however, received annual K-1 tax forms showing their yearly distributions which, in addition to other distributions, reflected the debits made to their capital accounts to reduce their profits in proportion to the political contributions attributed to them pursuant to 11 C.F.R. § 110.1(e)(2). The K-1 tax form provided to the individual partners did not specify what portion of the aggregate distributions were political contributions or identify the recipient of any political contribution. Respondents maintain that each partner who inquired about the distributions reflected on his K-1 tax form received an explanation of the calculations, including political contributions.

13. Most of the individual partners did not inquire about their distributions and remained unaware of the specific 1999-2000 political contributions attributed to them until 2001. In the Summer of 2001, Respondents obtained express written acknowledgements from most of the partners to whom political contributions had been attributed during the past several years. Although Respondents were able to obtain signed acknowledgements, or ratifications, for approximately 80% of the contributions, the Commission does not view the ratifications Respondents obtained from individual partners in the Summer of 2001 as meeting the pre-attribution "agreement" requirement set forth in 11 C.F.R. § 110.1(e)(2). Respondents maintain that the ratifications represent evidence that the individual partners considered the broad powers vested in the managing partner by virtue of the partnership agreements to authorize the non pro rata attributions of the contributions at the time they were made.

14. Between five and eight individual partners inadvertently exceeded their personal contribution limits as to their annual limit of $25,000 as a result of partnership contributions made by the 40 Associated Partnerships. *See* 2 U.S.C. §§ 441a(a)(1) and 441a(a)(3).

15. Approximately $83,000 in federal political contributions made by the 40 Associated Partnerships was inadvertently attributed to individuals who actually were <u>not</u> partners in that partnership at the time of the contributions. In most of the instances involving non-partners, the attributions were made to individuals who held interests in other Kushner associated partnerships, where that entity, in turn, was a partner in one of the 40 Associated Kushner Partnerships. In other instances, the individuals were former partners in the contributing partnership, and the attribution occurred as a result of a clerical error.

16. Respondents maintain that their actions were taken with the good faith belief that they were in compliance with all applicable laws and regulations. Beginning in July of 1999 and continuing through the present, Respondents retained a law firm experienced in campaign finance law to review Respondents' past and on-going federal political contributions for compliance with all legal requirements. Respondents maintain that they relied upon the legal advice provided and they have continued on a regular basis since 1999 to consult with legal counsel about their political contribution procedures and have relied on the advice provided.

17. Respondents maintain that they believed in good faith that the broad authority and powers-of-attorney conferred upon the managing partner by the respective partnership agreements encompassed management's decisions regarding non pro rata attributions to individual partners. Respondents, therefore, did not seek a more explicit agreement from the partners to whom the attributions were made for the non pro rata attribution of any specific contribution.

18. Although Respondents made additional contributions in 2001 and 2002, many of these later contributions were made pursuant to a revised procedure which included a specific agreement from partners as to dual attribution.

Violations of the Act

V. Respondents maintain that they relied upon advice of counsel, and without admitting or denying the Commission's conclusions, but in order to avoid the costs and distractions of protracted litigation, will not contest that:

1. The 40 Associated Partnerships violated 2 U.S.C. 441a and 11 C.F.R. § 110.1(e)(2) by not obtaining the specific agreement of the partners for non pro rata dual

attribution of partnership contributions, and also by attributing certain partnership contributions to individuals who were not partners in that partnership at the time of the contribution.

2. Charles Kushner violated 2 U.S.C. 441a(a)(3) by making contributions in excess of his $25,000 annual limit due to clerical errors.

VI. 1. Respondents will pay to the Federal Election Commission the amount of $508,900 pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will cease and desist from violating 2 U.S.C. § 441a and 11 C.F.R. § 110.1(e)(2). Respondents will obtain a prior agreement of individual partners before attributing partnership contributions in a non pro rata fashion pursuant to 11 C.F.R § 110.1(e)(2).

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 Commission and Respondents, and constitutes a final settlement as to Respondents, other associated entities managed by Mr. Kushner, their management and personnel, and all partners,

with respect to all issues relating to federal political contributions and expenditures prior to November of 2002. 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.

XI. This Conciliation Agreement does not bind, or otherwise affect the jurisdiction of, any other Agency or Department of the United States Government.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: Rhonda J. Vosdingh — 6/22/04
Rhonda J. Vosdingh — Date
Associate General Counsel
for Enforcement

FOR THE RESPONDENTS:

5/27/04
Jan Witold Baran — Date
WILEY REIN & FIELDING LLP
Washington, DC

Counsel for The 40 Associated
Partnerships & Charles Kushner