



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

SENSITIVE

In the Matter of)

MUR 5279

Charles Kushner et al.)

**Statement for the Record
Commissioner Scott E. Thomas**

I write this statement for the record to express my concern that the conciliation agreement reached in this matter with Charles Kushner and his group of 40 controlled partnerships does not reflect the legal theory that should govern his actions in the future. While the agreement does reach a satisfactory result regarding the past actions of Mr. Kushner and his controlled partnerships, it may leave the mistaken impression that the Commission agrees the contribution limit violations were "clerical." Conciliation Agreement at V, 2.

The heart of the matter, in my view, is that Mr. Kushner was using his controlled partnerships as a "group of persons" within the meaning of 2 U.S.C. §431(11) (defining the term "person" to include "an individual, partnership, committee, association, labor organization, or any other organization or *group of persons*. . . [emphasis added]"). Hence, the limits on a "person" giving to candidates, on giving to party committees, and on giving to other committees apply to Mr. Kushner and his controlled partnerships. 2 U.S.C. §441a(a)(1) ("No person shall make contributions . . . which, in the aggregate, exceed . . .").¹

¹ There can be no doubt that Mr. Kushner and the partnerships involved were acting as a "group of persons." As the conciliation agreement states at IV, 9 and 10:

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. . . 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.

The Commission has to be vigilant in assuring that the contribution limits do not become meaningless through the proliferation of controlled entities each making separate contributions. Congress gave the Commission clear authority to deal with the situation by using the "group of persons" language in the definition of "person," the term used in the contribution limit provisions. While it is true that Congress spoke even more clearly in the 'anti-proliferation' language at 2 U.S.C. §441a(a)(5) dealing with political committees ("all contributions made by political committees established or financed or maintained or controlled by . . . any . . . person . . . or any group of such persons, shall be considered to have been made by a single political committee. . ."), the legislative effort to prevent circumvention of the limits is patent.²

The conciliation agreement makes reference to the rules that govern most partnership contribution situations—where a single partnership makes a contribution. Those rules require 'dual attribution' of the partnership contribution to not only the partnership but also to one or more of the partners. 11 CFR §110.1(e). The cited regulations do not deal with the legal question of whether a "group of persons" such as a group of partnerships acting under common control must share the contribution limits applicable to a "person." Thus, in my view, whether the Kushner controlled partnerships dually attribute the partnership contributions pursuant to the general partnership share agreements or pursuant to separate attribution agreements (compare 11 CFR §110.1(e)(1) and (2)) is somewhat irrelevant. The real operating constraint is that the partnerships acting under the common control of Mr. Kushner must live within a single contribution limit by operation of the "group of persons" language that applies to the applicable

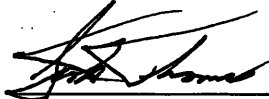
² The history of the latter provision suggests Congress aimed broadly to prevent evasion of the limits: "The anti-proliferation rules established by the conference substitute are intended to prevent corporations, labor organizations, or other persons or *groups of persons* from evading the contribution limits of the conference substitute. [emphasis added]" H.R. Conf. Rep. No. 94-1057 (94th Cong., 2nd Sess. at 58 (1976), reprinted in *Legislative History of Federal Election Campaign Act Amendments of 1976* at 1052 (GPO 1977).

It is worth noting that when considering the ability of a corporation to cross solicit PAC contributions at its affiliates (*see* 11 CFR §114.5(g)(1)), the FEC has treated all the partnerships controlled by the individual owning the corporation as part of the group whose restricted class can be solicited. Advisory Opinion 1983-48, available at www.fec.gov. This reflects a Commission judgment that partnerships controlled by the same person should be treated as one for purposes of the 'benefits' of the law (cross solicitation rights). A similar judgment should flow when considering the 'burdens' of the law (contribution limits).

contribution limits.³ Were it otherwise, Mr. Kushner could use his position of control to route \$80,000 in contributions to each federal candidate for each election through the associated partnerships as long as no partner exceeded his or her own limits.

6/25/04

Date



Scott E. Thomas
Commissioner

³ I have expressed concern previously about the danger of ignoring the "group of persons" analysis when dealing with limited liability companies. See Concurring Opinions in Advisory Opinion 1996-13 and 1998-11, available at www.fec.gov.



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