

AUG 30 2006
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
WinterFox LLC)
WinterHawk Enterprises LLC)
Evan Bybee)
Dennis Gay)

MUR 5333

2006 AUG 30 P 2:42

SENSITIVE

GENERAL COUNSEL'S REPORT #4

I. ACTIONS RECOMMENDED

1. Accept the attached conciliation agreement and close the file as to WinterFox LLC ("WinterFox");
2. Accept the attached conciliation agreement and close the file as to WinterHawk Enterprises LLC ("WinterHawk"); and
3. Take no further action and close the file as to Evan Bybee and Dennis Gay.

II. DISCUSSION

A. Background

This matter involves excessive contributions made by WinterFox and WinterHawk, two Utah limited liability companies that have elected partnership tax treatment. WinterFox and WinterHawk contributed \$10,000 and \$9,000, respectively, to John Swallow for Congress ("Committee") in connection with two elections during the 2002 election cycle when the limit was \$1,000 per election, resulting in \$8,000 in excessive contributions on the part of WinterFox and \$7,000 in excessive contributions on the part of WinterHawk. *See* 2 U.S.C. § 441a(a)(1)(A).

A contribution by a partnership shall be attributed to the partnership and to each partner, in one of two ways: 1) in proportion to his or her share of the profits, according to instructions which shall be provided by the partnership to the political committee or candidate; or 2) by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and these partners' profits are reduced (or losses

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increased) in proportion to the contribution attributed to each of them. 11 C.F.R. § 110.1(e).

Here, the WinterFox and WinterHawk member/partners employed the second method of attribution. *See* MUR 5333 General Counsel's Report #2 ("GCR #2") at 5-6.

Accordingly, the WinterFox contributions were attributed to WinterFox itself, as well as to its manager Evan Bybee and several other WinterFox member/partners in the amount of \$1,000 each. However, the entire amount of the WinterFox contributions was drawn solely against the WinterFox capital account of Evan Bybee instead of against the capital accounts of all the attributed members. Similarly, although the WinterHawk contributions were attributed to its manager Dennis Gay and several other WinterHawk member/partners in the amount of \$1,000 each, the entire amount of the WinterHawk contributions was drawn solely against the WinterHawk capital account of Dennis Gay instead of against the capital accounts of all the attributed members. Messrs. Bybee and Gay thus made excessive contributions to the Committee and made contributions in the names of other persons. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441f; GCR #2 at 6-7. Respondents' certified public accountant, however, has stated in a sworn affidavit that these draws solely to the accounts of Messrs. Bybee and Gay were mistakes on the part of the accountants. *See* GCR #2 at 7.

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Accordingly, we recommend that the Commission accept the
WinterFox and WinterHawk agreements, and take no further action and close the file as to Evan
Bybee and Dennis Gay

III. RECOMMENDATIONS

- 1 Accept the attached conciliation agreement and close the file as to WinterFox
LLC;

2. Accept the attached conciliation agreement and close the file as to WinterHawk Enterprises LLC;
3. Take no further action and close the file as to Evan Bybee and Dennis Gay; and
4. Approve the appropriate letter.

Lawrence H. Norton
General Counsel

Date

8/30/06

BY:

Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement

Cynthia E. Tompkins
Cynthia E. Tompkins
Assistant General Counsel

Mark Allen
Mark Allen
Attorney

Attachments:

1. Signed conciliation agreement from WinterFox LLC
2. Signed conciliation agreement from WinterHawk Enterprises LLC