

ZUCKERMAN SPAEDER LLP

ATTORNEYS AT LAW

MIAMI CENTER
201 SOUTH BISCAYNE BOULEVARD
SUITE 900
MIAMI, FLORIDA 33131-4326
(305) 358-5000
FACSIMILE (305) 579-9749

MICHAEL S. PASANO
MPASANO@ZUCKERMAN.COM

April 29, 2003

Rhonda L. Vosdingh
Associate General Counsel
Enforcement
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463-0001

Attn: April J. Sands, Esq.
Office of General Counsel

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2003 APR 29 P 4: 23

Re: MUR 5357/Centex Corporation

Dear Ms. Sands:

This is the response of Larry Casey and of David Hamlin to the Commission's notification that a complaint has been filed by Centex Corporation regarding possible violations of the Federal Election Campaign Act of 1971 as amended (the "Act") at a Centex subsidiary called Centex-Rooney Construction Company Inc. ("Rooney"). Because the facts and analysis with respect to these two (2) individuals are nearly identical, we submit a single response that relates to both men. Also submitted in support of this response are sworn affidavits of Mr. Casey and of Mr. Hamlin. For the reasons set forth below, we urge that the Commission conclude that no action should be taken against either Mr. Casey or Mr. Hamlin on the basis of the instant complaint.

Introduction

Larry D. Casey:

Larry D. Casey is a Senior Vice President of Marketing and Sales at Rooney. Mr. Casey has more than 25 years of construction, estimating, marketing and sales experience throughout the Southeast and Mid-Atlantic United States. He has worked on complex projects in the field, as an estimator and in business development for three national construction firms. He has been at Rooney for sixteen (16) years.

Mr. Casey has a B.S. in Building Construction from Virginia Polytechnic Institute which he received in 1977.

5025 904 40 52

April 29, 2003
Page 2

He is a member in good standing of numerous professional groups, including the Construction Management Association of America; the Construction Owners Association of America; the Design Build Institute of America; the Urban Land Institute; the Florida Education Facilities Planners Association; the Miami-Dade Chamber of Commerce; and the Greater Ft. Lauderdale Chamber of Commerce. He is also an Adjunct Professor at Florida International University in the department of Construction Management, where he has taught since 1989.

Mr. Casey has been married to his wife, Kathleen, for 14 years and the Caseys have two children, John (13) and Mary (12). Mr. Casey is active with his church, Calvary Chapel, and is a leader in his son's boy scout troop.

David Eugene Hamlin:

David Eugene Hamlin is a Senior Vice President and Chief Estimator at Rooney. Mr. Hamlin was born on June 24, 1951 in Avon Park, Florida. He grew up in Sebring, Florida and graduated from Sebring High School in 1969. He attended the University of Florida in Gainesville and graduated in August 1973 with a Bachelor of Building Construction degree. On September 16, 1972, while still attending college, he married Paula Keegan and the Hamlins have been happily married for over 30 years. During this time they have raised two children, Brent, 28 years old and Wendy 22 years old. After graduating from college, Mr. Hamlin joined Blount Brothers Corporation, a large commercial contractor, based in Montgomery, Alabama. In 1976, Blount gave him the opportunity to relocate to their international office in Riyadh, Saudi Arabia and Mr. Hamlin worked there for 2 years. After his return to Montgomery, he was instrumental in developing the company's international estimating group. Mr. Hamlin relocated to Blount's regional office in Tampa, Florida as Chief Estimator. In May 1986, Mr. Hamlin joined Frank J. Rooney (now Centex Rooney) as Vice President-Chief Estimator in their headquarters in Fort Lauderdale. He was promoted in 1998 to Senior Vice President and currently holds that position. He is well-regarded in his community and in the company.

The Complaint/Background

In January 2003, the CEO of Centex directed its General Counsel to undertake an investigation into whether or not employees of Rooney may have been reimbursed with corporate funds for individual political contributions. Thereafter Centex retained the law firm of Arnold & Porter to assist in this investigation. The instant complaint contains the results of the Arnold & Porter investigation.

Rooney is a long-standing construction company with an excellent reputation which operates in and outside of the State of Florida. Bob Moss joined Rooney in 1986 as Chairman, President and CEO. In 2000, Mr. Moss was promoted to the position of Chairman and CEO of Centex Construction Group. Mr. Moss remained as Chairman at

23-04-406-3206

April 29, 2003

Page 3

Rooney.

Gary Esporin joined Rooney around the same time as Mr. Moss and served as CFO of Rooney. Mr. Esporin was promoted in 2000 to co-CFO of Centex Construction Group but retained his position at Rooney. Mr. Esporin reported directly to Mr. Moss.

Rooney employees participated in several incentive compensation plans that paid bonuses to employees. A percentage of the bonus pool was reserved for discretionary bonuses. Mr. Moss and Mr. Esporin handled the bonus process. Mr. Moss reviewed and set the discretionary bonuses for the Rooney employees.

Rooney employees were encouraged to be active in their community affairs, including attending and participating in political fund-raisers, and making political and charitable contributions as part of Rooney's emphasis on relation-building and marketing. Mr. Moss and Mr. Esporin asked employees to keep them informed about these kinds of activities, including reporting the amounts of political contributions and to whom they were made.

It turns out that Mr. Esporin kept track of contributions and calculated amounts that would reimburse employees for contributions, "grossing up" the amounts to offset tax liability. These calculations were set out on spread sheets Mr. Esporin maintained and apparently used when employee bonuses were fixed. Centex and Arnold & Porter have concluded that contained within the large discretionary incentive compensation bonuses which some Rooney employees received were amounts that reimbursed for contributions made. The bonus checks did not show that this had occurred. Moreover, the Esporin spreadsheets were not shared with Rooney employees.

The complaint indicates that Larry Casey and David Hamlin each made one (1) political contribution for which each man was apparently reimbursed:

Casey: \$500 to Gallagher for Senate on February 14, 2000

Hamlin: \$500 to Gallagher for Senate on February 15, 2000

The complaint does not say that Mess'rs Casey and Hamlin requested reimbursement for the making of these contributions. They did not. The complaint does not say that Mess'rs Casey and Hamlin were aware they had been reimbursed. They were not. The complaint does not say that Mess'rs Casey and Hamlin were involved in any way with the bonus process or consulted at any time about the propriety of making reimbursements. They were not. In fact, the complaint makes it clear that Mess'rs Casey and Hamlin each merely wrote a check for a campaign contribution period. Their involvement in the instant matter starts and stops there.

April 29, 2003
Page 4

Centex/Rooney

Centex and Rooney are highly regarded companies with no history of improper behavior. The companies maintain high ethical standards and have clear policies that business is conducted in accordance with both the letter and the spirit of all applicable laws. Rooney employees tend to stay at the company. Its executive officers have all been with Rooney for many years. Bob Moss and Gary Esporin had excellent reputations. Larry Casey, David Hamlin and other Rooney employees are dedicated to the company, proud of its accomplishments, and committed to doing their jobs in an appropriate and professional manner.

Relevant Law

Pursuant to Section 441f of Title 2 of the Act, "no person shall make a contribution in the name of another or knowingly permit his name to be used to effect such a contribution..." Commission regulations made explicit that the prohibitions of Section 441f apply to individuals who help or assist in the making of contributions in the name of another. 11 C.F.R. § 110.4(b).

Pursuant to 2 U.S.C. § 441b, a corporation may not make a contribution in connection with the election of a candidate for federal office.

In determining if and how to proceed with possible violations of the Act, the Commission looks at whether any violations in fact occurred and whether the violations of law are knowing and willful. When Congress amended the Act in 1976 to centralize the criminal penalties for violations of the Act, it was concerned about the complexity and technical nature of the statute and the potential that non-culpable people could be caught up in apparent violations of law. See 122 Cong. Rec 8577 (March 30, 1976 statement of Representative Rostenkowski). During the House debates on the Conference Report for the 1976 Amendments, Congressman Hays stated that the phrase "knowing and willful" referred to "actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec H 3778 (May 3, 1976 remarks of Congress Hays).

This strict and liability-limiting notion of what constitutes knowing and willful acts has been adopted by the Courts. See e.g., Federal Election Commission v. Friends of Jane Harman, 59 F. Supp 2d 1046 (C.D. Calif. 1999); Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F. Supp 985 (D.N.J. 1986).

April 29, 2003

Page 5

Pertinent Facts

Both Mr. Casey and Mr. Hamlin occasionally contribute to political campaigns. In February 2000 each man was separately asked if he was interested in making a contribution to the Gallagher campaign. It turns out Bob Moss had arranged a Gallagher campaign fundraiser. Both Mr. Casey and Mr. Hamlin liked Gallagher as a candidate and both men were happy to make a contribution. They were not pressured to write checks.

Nor were they promised they would be reimbursed for making a contribution. Mr. Casey wrote his check on February 14, 2000 and gave the original to Mr. Moss. Mr. Hamlin wrote his check on February 15, 2000 and gave the original to Mr. Moss' secretary. Neither man asked to be reimbursed. Neither man submitted any paperwork for reimbursement. Neither man knew that Mr. Moss provided information about these contributions to Gary Esporin or that Esporin included amounts in his spreadsheets to reimburse these contributions. Neither man knew that their year 2000 discretionary bonus check included amounts reimbursing the contribution.

Analysis

The Commission is well familiar with cases involving allegations of companies reimbursing employees and third parties for political contributions. In determining what action to take, the Commission typically looks at evidence whether the "conduit employees" knew they were being reimbursed; knew their actions were illegal; and/or participated in acts of additional complicity. Cases where the Commission has taken action against the "conduit employees" have typically involved matters where there was clear evidence of knowledge and complicity. See e.g. MUR 2893 (Westwood One); and MUR 3508 (New Enterprise Stone and Lime Co.). Many such cases include evidence of falsification of company records in which employees played a part. In other cases, where there was no evidence of additional complicity by the "conduit employees", the Commission has elected to take no action, albeit sometimes issuing letters of admonishment. See e.g. MUR 4286 (General Cigar Co.); MUR 4884 (Future Tech Int'l); and MUR 5187 (Mattel Inc.).

Here, there is no evidence that Larry Casey and/or David Hamlin ever knew about the reimbursements, let alone that they thought they were doing anything improper. There is certainly no evidence Larry Casey and/or David Hamlin did anything to further the "reimbursement scheme". Each man made a total of one (1) contribution in an amount of \$500 to a candidate in whose campaign he believed. Neither man tendered information about these contributions to Rooney's CFO nor did they do anything to seek reimbursement. It never occurred to Mr. Casey and/or Mr. Hamlin that anything untoward was being done. Larry Casey and David Hamlin never thought they were doing anything even remotely inappropriate. They certainly never acted knowingly or willfully.

23 04 406 3209

April 29, 2003

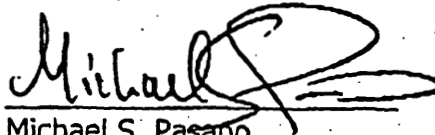
Page 6

Conclusion

Larry Casey and David Hamlin were at most unwittingly involved in a possible violation of the Federal Election laws at Rooney. Out of an abundance of caution, each man has paid back to the company, with interest, amounts he has been told were reimbursed. No further action should be taken against these men.

If you have any questions, or require further information, please do not hesitate to contact me at 305-579-0110.

Sincerely,



Michael S. Pasano

Counsel to Larry Casey and David Hamlin

MSP:emt

Enclosure

23 04 406 3210

SWORN STATEMENT

I, Larry Casey, being duly sworn, state and aver as follows.

1. My name is Larry Casey.
2. I am a Senior Vice President of marketing and sales at Centex Rooney Construction Company. I have worked at Rooney since 1986.
3. In or about February 2000, Robert Moss, former Chairman of Rooney and former Chairman and CEO of Centex Construction Group, told me he was involved with a campaign fundraiser for Senate candidate Tom Gallagher. Mr. Moss asked if I was interested in making a contribution to the Gallagher campaign. I ultimately wrote a check to Gallagher for Senate on or about February 14, 2000 and gave the original check to Mr. Moss. In doing so, I did not believe I was doing anything improper.
4. I did not ask anyone to submit this expense for reimbursement and did not expect this to happen. I did not know that Mr. Moss apparently submitted a copy of this check to Gary Esporin, former CFO of Rooney, for reimbursement.
5. In 2000 I was entitled to a discretionary bonus. I have no involvement in the bonus process and do not know exactly how bonuses are calculated. I have been advised that contained within my 2000 year bonus was an amount reimbursing me for the \$500 check I wrote in February 2000. This was news to me and I never was aware that this had occurred.
6. I have been advised that the Company retained counsel and notified the Federal Election Commission of potential violations of the Federal Election laws. I have never knowingly or willingly been party to any violation of law.

23 04 406 331

7. At the Company's request, however, I have paid back with interest the monies I am told were reimbursed to me.

FURTHER AFFIANT SAYETH NOT

Larry Casey
LARRY CASEY

STATE OF Florida)

COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 25 day of April, 2003 by Larry Casey, who is personally known to me or who has produced _____ as identification and who did take an oath.

Delana J. Hughes
Notary Public, at Large
State of Florida

Delana J. Hughes
Print Name

Commission Seal:



Delana J Hughes
My Commission DD182070
Expires February 02, 2007

2003 APR 29 4 17 PM

SWORN STATEMENT

I, David Hamlin, being duly sworn, state and aver as follows.

1. My name is David Hamlin.
2. I am a Senior Vice President of estimating at Centex Rooney Construction Company. I have worked at Rooney since May 1986.
3. In or about February 2000, I received a call from Robert Moss' secretary informing me that Mr. Moss was soliciting contributions for the Tom Gallagher Senate campaign. Mr. Moss is former Chairman of Rooney and former Chairman and CEO of Centex Construction Group. I decided to make a contribution and wrote a check to Gallagher for Senate on or about February 15, 2000. I gave the original check to Mr. Moss' secretary.
4. I never spoke directly to Mr. Moss about this and did not consider the matter unusual or particularly important. At no time did I believe I was doing anything improper.
5. At no time was there any mention of any monies being reimbursed to me. I did not ask anyone to submit this expense for reimbursement and did not expect this to happen. I did not know that Mr. Moss apparently submitted a copy of this check to Gary Esporin, former CFO of Rooney, for reimbursement.
6. In 2000 I was entitled to a discretionary bonus. I have no involvement in the bonus process and do not know exactly how bonuses are calculated. I have been advised that contained within my bonus for the year 2000 was an amount reimbursing

23-04-406-3213

me for the \$500 check I wrote in February 2000. I was never aware that this had occurred.

7. I have been advised that the Company retained counsel and notified the Federal Election Commission of potential violations of Federal Election laws. I have never knowingly or willingly been party to any violation of law.

8. At the Company's request, however, I have paid back with interest the monies I am told were reimbursed to me.

FURTHER AFFIANT SAYETH NOT

David Hamlin
DAVID HAMLIN

STATE OF Florida)

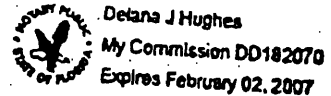
COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 23 day of April, 2003 by David Hamlin, who is personally known to me or who has produced _____ as identification and who did take an oath.

Delana J Hughes
Notary Public, at Large
State of Florida

Delana J Hughes
Print Name

Commission Seal:



23.04.406.3214