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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Alfred C. Sharpton)
Rev. Al Sharpton Presidential Exploratory)
Committee (a/k/a Sharpton 2004) and)
Luis A. Miranda, Jr., as treasurer)

MUR 5363

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint filed by Kenneth F. Boehm, Chairman of the National Legal and Policy Center, and on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The Federal Election Commission ("Commission") found reason to believe that Respondent Alfred C. Sharpton violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a), and Respondent Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004) and Luis A. Miranda, as treasurer, (collectively "Respondents") violated 2 U.S.C. §§ 433(a) and 434(a)(3).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

The Commission has jurisdiction over 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).

I. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

II. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent law and facts in this matter are as follows:

1 1. The Federal Election Campaign Act of 1971, as amended, (the "Act") provides that an
2 individual seeking nomination for election to Federal office is deemed to be a "candidate" when he or
3 she receives contributions or makes expenditures aggregating in excess of \$5,000. 2 U.S.C. §
4 431(2)(A). An individual is also so deemed if he or she has given consent to a committee to receive
5 contributions or make expenditures on his or her behalf, and that committee has received
6 contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2)(B).

7 2. The Commission's "testing the waters" regulations, 11 C.F.R. §§ 100.72(a) and
8 100.131(a), exempt from the definitions of "contribution" and "expenditure" funds received solely
9 for the purpose of determining whether an individual should become a candidate. The exemptions do
10 not apply to funds received or payments made for activities indicating that an individual has decided
11 to become a candidate for a particular office or for activities relevant to conducting a campaign. *Id.*

12 3. The Commission's regulations provide that examples of activities indicating that an
13 individual has decided to become a candidate include: "the individual makes or authorizes written or
14 oral statements that refer to him or her as a candidate for a particular office." 11 C.F.R.
15 §§ 100.72(b)(3) and 100.131(b)(3).

16 4. If the individual who had been "testing the waters" subsequently becomes a candidate,
17 funds received or payments made for "testing the waters" are contributions and expenditures subject
18 to the reporting requirements of the Act. 11 C.F.R. §§ 100.72(a) and 100.131(a). Such
19 contributions and expenditures must be reported with the first report filed by the principal campaign
20 committee of the candidate, regardless of the date the funds were received and the payments made.
21 *Id.*

1 5. The Act and the Commission's regulations provide that, within fifteen days of becoming a
2 candidate, an individual must file a statement of candidacy with the Commission which designates the
3 candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a).

4 6. No later than ten days after it has been designated by the candidate, the principal
5 campaign committee must file a statement of organization. 2 U.S.C. § 433(a).

6 7. If a committee is the principal campaign committee for a presidential candidate, it must
7 file timely financial disclosure reports as required by 2 U.S.C. § 434(a)(3).

8 8. Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004) ("Sharpton's
9 Committee") both received and expended in excess of \$5,000 by September 2002.

10 9. In October 2002, *Al on America*, a book written by Sharpton "with Karen Hunter," was
11 published. *See* Reverend Al Sharpton, *Al on America* (Kensington Publishing Corp. ed.) (trade
12 paperback ed.). Sharpton's book contains statements that unequivocally refer to himself as a
13 candidate for President. The title of Chapter One is "Mr. President." On page 4, after listing his
14 various roles in life and his beliefs, Sharpton states: "It is on those qualities that I am seeking the
15 Presidency of the United States in 2004." On page 7, Sharpton states: "I am running for president to
16 finally put the issues concerning most Americans onto the front burner." On pages 17 and 18,
17 Sharpton sets forth a number of reasons that "I am running." *See also* page 20 ("At least with me,
18 for progressives and liberals, I'm the only one in the race who, if you support me, will win you
19 something I am running to bring the liberal wing back to the Democratic Party"), page 23 ("I'm
20 running to build the Democratic Party, to strengthen it") and page 24 ("I've gone all over this
21 country over the last two years . . . people are hurting. I'm running for them. I represent them.")

22 10. Sharpton became a candidate no later than October 2002, when he made statements
23 included in his book referring to himself as a candidate for President (*see* 11 C.F.R. §§ 100.72(b)(3))

1 and 100.131(b)(3)), given that his Committee had already raised and spent more than \$5,000 by that
2 time.

3 11. On January 21, 2003, Sharpton filed papers with the Commission registering the Rev. Al
4 Sharpton Presidential Exploratory Committee. In the filing, the word "campaign" is crossed out in
5 the phrase "principal campaign committee" and replaced with the word "exploratory." Sharpton did
6 not file a statement of candidacy designating a committee as his principal campaign committee at that
7 time.

8 12. On April 29, 2003, Sharpton filed a statement of candidacy, which designated "Sharpton
9 2004" as his principal campaign committee.

10 13. Sharpton's Committee did not file an amended statement of organization renaming itself
11 "Sharpton 2004" until July 10, 2003.

12 14. Sharpton's Committee was required to file the 2002 Year End Report by January 31,
13 2003. Sharpton's Committee did not file the Report until April 29, 2003. The Report disclosed
14 receipts of \$24,800.00 and disbursements of \$24,076.35.

15 15. Sharpton's Committee was required to file the 2003 April Quarterly Report by April 15,
16 2003. Sharpton's Committee did not file the Report until April 29, 2003. The Report disclosed
17 receipts of \$82,656.00 and disbursements of \$7,170.39.

18 16. Rev. Sharpton contends that his original counsel to his campaign advised him that he had
19 not become a candidate as that term is defined under Federal Election Commission regulations prior
20 to April 29, 2003, and therefore he was not required to file his statement of candidacy, and his
21 Committee was not required to file reports of receipts and disbursements, until that date.

22 V. 1. Alfred C. Sharpton violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) by
23 failing to file a statement of candidacy designating his principal campaign committee within fifteen

1 days of becoming a candidate. Sharpton will cease and desist from violating 2 U.S.C. § 432(e)(1)
2 and 11 C.F.R. § 101.1(a).

3 2. Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004)
4 and Luis A. Miranda, as treasurer, violated 2 U.S.C. § 433(a) by failing to file an amended statement
5 of organization ten days after it was designated by Alfred C. Sharpton as his principal campaign
6 committee. These Respondents will cease and desist from violating 2 U.S.C. § 433(a).

7 3. Rev. Al Sharpton Presidential Exploratory Committee (a/k/a Sharpton 2004)
8 and Luis A. Miranda, as treasurer, violated 2 U.S.C. § 434(a)(3) by failing to file timely its 2002
9 Year End and its 2003 April Quarterly Reports. These Respondents will cease and desist from
10 violating 2 U.S.C. § 434(a)(3).

11 VI. Respondents will pay a civil penalty to the Federal Election Commission in the
12 amount of Five Thousand Five Hundred Dollars (\$5,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

13 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
14 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
15 with this agreement. If the Commission believes that this agreement or any requirement thereof has
16 been violated, it may institute a civil action for relief in the United States District Court for the
17 District of Columbia.

18 VIII. This agreement shall become effective as of the date that all parties hereto have
19 executed same and the Commission has approved the entire agreement.

20 IX. Respondents shall have no more than thirty (30) days from the date this agreement
21 becomes effective to comply with and implement the requirement contained in this agreement and to
22 so notify the Commission.

