



FLORIDA ELECTIONS COMMISSION

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

May 28, 2002

PRE-MUR # 408

Office of the General Counsel
Federal Election Commission
999 E Street, N. W.
Washington, D.C. 20463

Dear Sir:

On October 11, 2001, the Florida Elections Commission (Commission) received a sworn complaint alleging that Victec Environmental Services, Inc. (Victec), 1401 University Drive, Suite 301, Coral Springs, Florida 33071 violated Florida Election Law by making a contribution through or in the name of another and making contributions to a candidate in excess of \$500 per election.¹ The Commission opened a case, and it was assigned the number FEC 01-265.

After investigation, the Commission determined that Victec was not the proper Respondent and the Commission dismissed the case against Victec. However, during the investigation it was learned that one of the owners of Victec, Jose Casal, a Venezuelan foreign national, indirectly made five \$500 contributions to a candidate in the Miami 2000 mayoral race in violation of 2 U.S.C. 441e and 11CFR 110.4(a).

At the last meeting, the Commission instructed staff to file a complaint against Mr. Casal with the Federal Election Commission. The following is a formal complaint against Mr. Casal and a summary of the information obtained in FEC 01-265 by Commission staff.

¹ However, during the investigation, the 11th Circuit Court of Appeals in *Florida Right to Life v. Lamar* held that Section 106.08(5), Florida Statutes, which prohibits a person from making a contribution through or in the name of another is facially unconstitutional under the First and Fourteenth Amendments to the United States Constitution. 273 F.3d 1318 (11th Cir. 2001)

1. Victec is a 'solid waste' management company. Luis Thula is the president of the corporation and son-in-law of Jose Casal, one of the owners of Victec.

2. The Complainant in FEC 01-265, Juan Koop, is a detective with the Miami-Dade Police Department who conducted an investigation into whether Jose Casal indirectly contributed to Alex Penelas' Miami mayoral campaign through Victec employees. According to Detective Koop, the evidence collected did not reach the standard for a criminal violation, and no charges were filed.

3. Mayor Penelas' Campaign Treasurer's Reports showed that five people associated with Respondent gave \$500 contributions to the mayoral campaign on July 17, 2000. Four of the contributors were Respondent's employees. The fifth contributor was the spouse of an employee.

4. Mr. Thula, Victec's president said in a sworn statement to the Miami-Dade Police Department on August 7, 2001, that he was instructed by his father-in-law, Jose Ignacio Casal, to find five people to make a donation of \$2,500. Mr. Thula stated, "we divide [sic] these five checks in \$500 each check, and he gave me the money and write [sic] the check to the campaign of Mr. Penelas." When asked by the Miami-Dade police, who were the five people he found to contribute, Mr. Thula responded Ray Rodriguez, Pedro Rodriguez, Hector Munio, George Pattis and Carolina Caceres.

5. Miami-Dade police interviewed the five contributors during the investigation. All five admitted, under oath, making the \$500 contributions and being reimbursed for the contributions.

6. On February 15, 2002, Respondent's attorney, Benedict Kuehne, faxed Commission staff the written response to the complaint. According to the written statement,

Luis Thula ... inquired of Victec employees whether they would consider contributing to Mayor Penelas campaign. A number of employees spoke favorably of Mayor Penelas, but were not in a financial position to make meaningful contributions. Therefore, Luis Thula received a commitment from his father-in-law to reimburse these employees for their contributions, and obtained a number of \$500 contributions to the Mayor Penelas campaign. In return for the contributions, Luis Thula reimbursed the employees. The contribution checks were then passed on to the Mayor Penelas campaign (to Tony Mijares, at a campaign reception event at the home of Emillio Conde).

7. I am enclosing a copy of the Commission's Report of Investigation and Statement of Findings on FEC 01-265. The Report of Investigation contains Exhibits of pertinent information. Please feel free to contact Commission staff for additional

information. The investigator for the case was Margie Wade and the attorney was Phyllis Hampton.

Sincerely,

Keith Smith

Keith Smith
Investigation Specialist

I HEREBY SWEAR OR AFFIRM THAT THE FORGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Keith Smith

Keith Smith
Investigation Specialist

Sworn to (or affirmed) and subscribed before me this
28 day of

May 2002

Patricia A. Rushing

Signature of Notary Public - State of Florida

Print, Type, or Stamp Commissioned Name of
Notary Public

Personally Known ☒ or Produced
Identification _____

Type of Identification Produced:



Patricia A. Rushing
MY COMMISSION # DD068099 EXPIRES
October 28, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

24-04-407-3893

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 01-265

Respondent: Victec Environmental Services, Inc.

Complainant: Juan Koop

On October 11, 2001, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 106, Florida Statutes. The Commission staff investigated the allegations and based on the facts and conclusions of law contained in the Complaint, the Report of Investigation, and this statement, the staff recommends that there is no probable cause to charge the Respondent with:

Section 106.08(1), Florida Statutes, prohibiting a person from making contributions to a candidate in excess of \$500 for each election; and

Section 106.08(5), Florida Statutes, prohibiting a person from making a contribution through or in the name of another in any election.

Summary of Facts and Conclusions of Law

1. Respondent is a solid waste management company. The articles of incorporation were filed with the Department of State on May 15, 1998. Luis Thula is the president of the corporation. According to Mr. Thula's attorney's response, Mr. Thula is a foreign national and is not eligible to register to vote or run for public office in Florida.

2. Complainant is a detective with the Miami-Dade Police Department. Complainant conducted an investigation after receiving an anonymous letter stating that Respondent's owner, Jose Casal, required employees to contribute to a mayoral candidate and later reimbursed the employees for their contributions. According to Complainant, the evidence collected did not reach the standard for a criminal violation; therefore, no charges were filed against Respondent as a result of this investigation.

3. Jose Casal is also a foreign national, and, according to Mr. Thula, is one of several owners of Victec Environmental Services, Inc. (Victec), and the father-in-law of Luis Thula.

I. Section 106.08(5), Florida Statutes.

4. Commission staff initially began an investigation into whether the Respondent violated Section 106.08(5), Florida Statutes, by making contributions through or in the name of another.

24-04-407-3895

5. However, during the investigation, the 11th Circuit Court of Appeals in *Florida Right to Life v. Lamar*¹ held that Section 106.08(5), Florida Statutes, is facially unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

II. Section 106.08(1), Florida Statutes.

6. Commission staff investigated whether Respondent violated Section 106.08(1), Florida Statutes, by making a contribution to a candidate in excess of \$500 per election.

7. According to Complainant, he received an anonymous letter stating that Respondent's owner asked six of its employees to contribute to the 2000 mayoral campaign of Alexander Penelas and that the Respondent reimbursed each employee for the contributions.

8. Copies of Mayor Penelas' Campaign Treasurer's Reports were obtained from the filing officer. According to the campaign treasurer reports, five people associated with Respondent gave \$500 contributions to the mayoral campaign on July 17, 2000. Four of the contributors were Respondent's employees. The fifth contributor was the spouse of an employee.

9. Mr. Thula, Respondent's president, gave a sworn statement to the Miami-Dade Police Department on August 7, 2001. According to the sworn statement, Mr. Thula became Respondent's president in March of 2000. Mr. Thula stated that his father-in-law, Jose Ignacio Casal, approached him about the contributions. He added that he was instructed by his father-in-law to find five people to make a donation of \$2,500. Mr. Thula stated, "we divide [sic] these five checks in \$500 each check, and he gave me the money and write [sic] the check to the campaign of Mr. Penelas." When asked by the Miami-Dade police, who were the five people he found to contribute, Mr. Thula responded Ray Rodriguez, Pedro Rodriguez, Hector Munio, George Pattis and Carolina Caceres. He added that he also contributed to the Penelas Campaign and was reimbursed by his father-in-law; however, there is no record of Mr. Thula's contribution on Penelas' campaign treasurer report.

10. Miami-Dade police interviewed the five contributors during the investigation. Miami-Dade police provided Commission staff with copies of the sworn statements from the witnesses.

11. On July 5, 2001, Miami-Dade police interviewed Reynaldo Rodriguez. He related in his sworn statement that he was the operations manager for Respondent. He related that Luis Thula requested that he make a \$500 contribution to the 2000 mayoral campaign of Alex Penelas. He stated he wrote a check to the Penelas campaign from his personal account. He added that Luis Thula reimbursed him with \$500 cash. He added that Mr. Thula suggested the amount of the contribution.

12. Miami-Dade police also interviewed Pedro Rodriguez. He stated that Ray Rodriguez and Luis Thula requested that he make the donation to Penelas' campaign. He stated that Mr. Thula told him that he would reimburse the money to him. Ray Rodriguez was present

¹ 273 F.3d 1318 (11th Cir. 2001)

at the time. He explained that he did not have a personal checking account; therefore, he asked his wife to write a check to the Alex Penelas campaign. He acknowledged that the money was reimbursed. He stated that this was the first time he has contributed to a political campaign.

13. According to the sworn statement of Ana Rodriguez, she never worked for Respondent. She added that her husband, Pedro Rodriguez, worked for Respondent. She stated that her husband asked her to write a check to the Penelas campaign. She explained that he asked her to write the check because he did not have a checking account. She stated that her husband told her that his boss, Ray Rodriguez, asked him to make the contribution. She stated that a couple of days after giving her husband the check, he gave her the money back in cash. She stated she deposited the money into her checking account.

14. According to the sworn statement of George Pattis, he was a marketing representative for Respondent from February of 1999 through October of 2000. Mr. Pattis related that Mr. Thula asked him to write a personal check to Mr. Penelas' campaign for \$500. He acknowledged that he gave a personal check for the Penelas campaign to Mr. Thula. He stated he subsequently submitted an expense form to Respondent's comptroller and received a reimbursement check.

15. According to police records, Detective Velken interviewed Hector Munio on July 5, 2001. Mr. Munio related that in June of 2000, while in a meeting with other employees, Mr. Thula asked each of them to make a five hundred-dollar contribution to the Alex Penelas campaign. Mr. Munio stated that Mr. Thula explained that he would reimburse them, upon receiving their check. He admitted giving Mr. Thula a \$500 check on July 13, 2000 and receiving \$500 cash from Mr. Thula. Mr. Munio stated that he deposited the \$500 cash into his personal checking account on July 14, 2000, along with other monies. According to Mr. Munio's monthly bank statement, the deposit was made on Monday, July 17, 2000, instead of July 14, 2000.

16. On July 5, 2001, Miami-Dade police interviewed Carolina Caceres. Ms. Caceres related that she worked for Respondent from 1999 until April of 2001. She stated that the president of the company, Mr. Thula, asked her to make a contribution to Alex Penelas' campaign. She explained she wrote a check to the Penelas campaign and gave it to Mr. Thula and Mr. Thula gave her \$500 cash, which she deposited into her personal account. She added that she had not previously contributed to any political candidates.

17. On February 15, 2002, Respondent's attorney, Benedict Kuehne, faxed Commission staff the written response to the complaint. According to the written statement,

Luis Thula ... inquired of Victec employees whether they would consider contributing to Mayor Penelas campaign. A number of employees spoke favorably of Mayor Penelas, but were not in a financial position to make meaningful contributions. Therefore, Luis Thula received a commitment from his father-in-law to reimburse these employees for their contributions, and obtained a number of \$500 contributions to the Mayor Penelas campaign. In return for the contributions, Luis Thula reimbursed the employees.

The contribution checks were then passed on to the Mayor Penelas campaign (to Tony Mijares, at a campaign reception event at the home of Emilio Conde).

18. Mr. Kuehne also related in the response, "as a Venezuelan citizen, Mr. Thula had no inkling that Florida election law was so restrictive. He believed at the time he was assisting in the effort to re-elect a good and hardworking public servant..." Mr. Kuehne stated in the written response that:

...At no time did Luis Thula review Florida campaign finance requirements or confer with any person regarding campaign finance requirements. He never signed a "Statement of Candidate Form" with the Department of Elections [sic], and was unaware of prohibitions regarding reimbursing individuals for making contributions. Nor did he discuss the Victec employees' contributions with Mayor Penelas or any representative of the Mayor's campaign....

19. Mr. Kuehne noted that Mr. Thula's father-in-law, Jose Casal, is an investor in Victec but has not been "an officer, director, or employee of the company." He also noted that Mr. Casal was a Senator in Venezuela and Minister of Commerce "under the administration of Venezuelan President Andres Perez from 1974 through 1977."

III. Conclusion.

20. The Respondent in this case is Victec Environmental Services, Inc. While Mr. Thula stated in the sworn statement to the Miami-Dade police that Mr. Casal gave him \$2500 in cash to give to the five Victec employees so that they could each contribute \$500 to the 2000 Alex Penelas mayoral campaign, there is no evidence that the \$2500 was money from Victec.

21. Under these circumstances, I recommend that the Commission find that the Respondent did not violate Section 106.08(1), Florida Statutes.

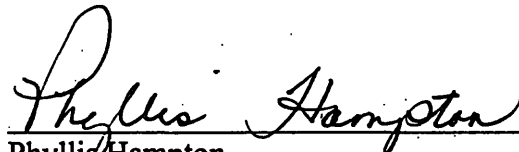
22. While the Commission does not have a sworn complaint against Mr. Casal, Mr. Thula's sworn statement to the Miami-Dade police acknowledges that Mr. Casal gave Mr. Thula \$2500 in cash to give to the five Victec employees so that they could each contribute \$500 to the 2000 Alex Penelas mayoral campaign. According to Mr. Thula's attorney, Mr. Kuehne, Mr. Thula admits that he gave the money to the five employees, but denies that he knew this was against the law. However, Mr. Casal gave each of the five contributors \$500, the maximum contribution allowed under Florida law, and neither Mr. Thula nor his son-in-law, Luis Thula, gave a contribution to the Penelas campaign. Both Mr. Casal and Mr. Thula are foreign nationals. It certainly appears that Mr. Casal knew the contribution limit was \$500 per person and knew that neither he nor his son-in-law were allowed to make political contributions.

23. It appears that the proper Respondent for this offense is Jose Casal. I recommend that the Commission instruct staff to swear out a complaint against Mr. Casal alleging a violation of Section 106.08(1), Florida Statutes.²

24. In addition to Mr. Casal's actions being prohibited by Section 106.08(1), Florida Statutes, federal law prohibits foreign nationals from donating to any federal or non-federal elections in the United States.

25. Mr. Casal is a foreign national living in the United States. Pursuant to 2 U.S.C. 44le and 11CFR 110.4(a), it is unlawful for a foreign national to make a contribution in connection with any Federal or non-Federal election.³ The Federal Election Commission has jurisdiction over such illegal contributions.⁴ I also recommend that the Commission instruct staff to swear out a complaint against Mr. Casal to the Federal Elections Commission alleging that Mr. Casal violated 2 U.S.C. 44le and 11CFR 110.4(a).

Respectfully submitted on March 15, 2002,


Phyllis Hampton
General Counsel

Copy furnished to:
Barbara M. Linthicum, Executive Director
Margie Wade, Investigator Specialist

² Pursuant to Section 106.28, Florida Statutes, there is a two-year statute of limitations on violations of Chapter 106, Florida Statutes. The checks for the five contributions were all dated between July 13 and 18, 2000. The statute of limitations is tolled upon the filing of a complaint with the Commission.

³ See Federal Election Commission brochure at the conclusion of this report entitled, *Foreign Nationals*.

⁴ A complaint may be filed with the Office of General Counsel, Federal Election Commission, 999 E Street, N. W., Washington, D.C. 20463. A complaint must provide the name and address of the person filing the complaint and be signed, sworn to and notarized.