



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

DEC 10 2003

F. Patrick Yeatts, Agent
RST Marketing Associates
18321 Forest Road
Lynchburg VA 24502

RE: MUR 5396
RST Marketing Associates

Dear Mr. Yeatts:

On November 18, 2003, the Federal Election Commission found that there is reason to believe RST Marketing Associates violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

F. Patrick Yeatts, Agent
RST Marketing Associates
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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

2025.04.10.10.35

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2 **FEDERAL ELECTION COMMISSION**
3 **999 E Street, N.W.**
4 **Washington, D.C. 20463**
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6 **FACTUAL AND LEGAL ANALYSIS**
7

8 **RESPONDENTS:** RST Marketing Associates, Inc. **MUR: 5396**
9

10 **I. INTRODUCTION**

11 This matter was generated based on information ascertained by the Federal Election
12 Commission ("the Commission") in the normal course of carrying out its supervisory
13 responsibilities. *See* 2 U.S.C. § 437g(a)(2).

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 There is reason to believe that RST Marketing Associates, Inc. ("RST"), a direct mail
16 vendor, made prohibited contributions to Bauer for President 2000, Inc. ("Committee") in the
17 form of extensions of credit. RST provided direct mail services to the Committee for which it
18 was not fully paid in a timely manner. Thus, the Commission finds reason to believe that RST
19 made prohibited contributions to the Committee.

20 The extension of credit by any person is a contribution unless it is extended in the
21 ordinary course of business and the terms are substantially similar to extensions of credit to
22 nonpolitical debtors of similar risk and size of obligation. 11 C.F.R. § 100.7(a)(4). If a creditor
23 fails to make a commercially reasonable attempt to collect the debt, a contribution will result.
24 *Id* ; *see* 11 C.F.R. § 116.3 and 116.4. Although corporate contributions are prohibited, 2 U.S.C.
25 § 441b(a) and (b), an extension of credit by an incorporated commercial vendor to a candidate or
26 political committee will not be considered a contribution provided the terms are substantially
27 similar to its extensions of credit to nonpolitical debtors that are of similar risk and size of
28 obligation, and the credit is extended in the ordinary course of the commercial vendor's business.
29 11 C.F.R. § 116.3(a) and (b), *see* § 116.1. To determine if credit was extended in the ordinary

1 course of the commercial vendor's business, the Commission will consider: 1) whether the
2 commercial vendor followed its established procedures and its past practice in approving the
3 extension of credit; 2) whether the commercial vendor received prompt payment in full if it
4 previously extended credit to the same candidate or political committee; and 3) whether the
5 extension of credit conformed to the usual and normal practice in the commercial vendor's trade
6 or industry. 11 C.F.R. § 116.3(c).

7 RST served as a direct mail vendor for the Committee. RST billed the Committee
8 \$1,149,315 for its direct mail services. Terms noted on the invoices indicated that payment was
9 "due in 30 days." Twelve invoices from this vendor, totaling \$342,613, were not paid timely.
10 Seven invoices, in amounts ranging from \$1,500 to \$12,000, remained outstanding between 134
11 to 164 days. The remaining five invoices, in amounts between \$40,000 and \$93,000, remained
12 outstanding between 103 and 195 days.

13 There is no available evidence that RST sent subsequent invoices or made additional
14 attempts to collect the amounts due. The Committee's July 2003 Quarterly Report discloses a
15 debt of \$26,531.97 owed to RST, which might indicate a subsequent extension of credit to the
16 Committee.

17 There is reason to believe that the extension of credit by RST was a prohibited corporate
18 contribution. 2 U.S.C. § 441b. There is no evidence that RST's extension of credit to the
19 Committee was in the ordinary course of business, on terms that were substantially similar to its
20 extension of credit to nonpolitical debtors of similar risk and size of obligation. 11 C.F.R.
21 §§ 100.7(a)(4), 116.3(b). There is no evidence that RST followed its established procedures and
22 past practice or that the extension of credit conformed to the usual and normal practice in the
23 direct mail industry. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). For example, there is no evidence of

1 collection efforts by this vendor or information about its collection policies and practices,
2 advance payment policies, or billing cycles for nonpolitical debtors. Further, it appears that RST
3 may have continued to extend credit to the Committee despite not receiving prompt payment of
4 prior extensions of credit. *Id.* Thus, there is reason to believe that RST's extension of credit to
5 the Committee was not in the ordinary course of business.

6 Therefore, there is reason to believe that RST Marketing Associates Inc. made a
7 prohibited contribution to the Committee in the amount of \$342,613 for the period the invoices
8 remained outstanding in violation of 2 U.S.C. § 441b(a).