FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR - 9 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth F. Boehm, Chairman
National Legal and Policy Center
107 Park Washington Court
Falls Church, VA 22046

RE: MUR 5408

Dear Mr. Boehm:

This is in reference to the complaint you filed with the Federal Election Commission on February 9, 2004, concerning Alfred C. Sharpton, et al. The Commission found that there was reason to believe Reverend Alfred C. Sharpton, and Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended. In addition, the Commission found that National Action Network, Inc. and Alfred C. Sharpton, as President, violated 2 U.S.C. § 441b. As such, the Commission conducted an investigation in this matter.

On April 2, 2009, a conciliation agreement signed by Reverend Alfred C. Sharpton, and Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer, was accepted by the Commission. Also on this date, the Commission accepted a conciliation agreement signed by National Action Network, Inc. and Alfred C. Sharpton, as President. Copies of the conciliation agreements are enclosed for your information.

In addition, the Commission previously found that there was reason to believe Roger Stone, LaVan Hawkins, and Wendy Hawkins violated 2 U.S.C.§ 441a(a)(1)(A). However, after considering the circumstances of this matter, the Commission determined to take no further action as to these respondents, and closed the file as it pertained to them on December 3, 2008. The Factual and Legal Analyses, which more fully explain the Commission's findings concerning these respondents, are enclosed.

Accordingly, the Commission closed the entire file in this matter on April 2, 2009. Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Camilla Jackson Jones
Attorney

Enclosures
Conciliation Agreements
Factual and Legal Analyses

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reverend Alfred C. Sharpton and Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer	)	MUR 5408

CONCILIATION AGREEMENT

This matter was initiated by a complaint as later supplemented by information the Federal Election Commission ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Reverend Alfred C. Sharpton and his presidential campaign committee, Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) (the "Committee" or "Sharpton 2004"), violated various provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), including 2 U.S.C. §§ 434(b), 441a(f) and 441b by failing to accurately report all receipts and expenditures, and by receiving excessive and prohibited in-kind contributions.

NOW, THEREFORE, the Commission and the Reverend Alfred C. Sharpton and Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (collectively "Respondents"), having duly participated in informal methods of conciliation prior to a finding of probable cause to believe, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

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

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

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

Background

1. Reverend Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in 2004. Although Sharpton did not file a Statement of Candidacy on April 29, 2003, he actually was a candidate no later than October 2002. *See* MUR 5363 Conciliation Agreement ¶¶ V.1-3. Sharpton is an entrepreneur who derives his living from paid speaking engagements, his radio and television talk shows, and from his work as an activist. Although he has never held public office, Sharpton has been a federal candidate on three prior occasions, having run in New York's Democratic primaries for the United States Senate in 1978, 1992 and 1994.

2. Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) was the principal campaign committee for Sharpton.

3. National Action Network ("NAN") is a domestic non-profit corporation founded by Sharpton in 1991 and incorporated in the State of New York in 1994. The organization describes itself as being focused on grassroots activity designed to highlight civil and human rights issues throughout the country. Sharpton has served as President of NAN since its inception and traveled extensively for NAN-related activities in 2002-2004.

4. Rev-Als Production, Inc. and Sharpton Media Group LLC, are two unincorporated wholly owned, sole proprietorships founded by Sharpton. Both business entities serve as vehicles for Sharpton's entrepreneurial activities and have no staff, maintain no overhead, and pay all of their profits to Sharpton in the form of dividends, which he claims as income in his personal tax filings with the Internal Revenue Service.

5. Archer Group, Inc. is a San Francisco-based political consulting firm that originally entered into a contract with NAN in October 2003 to develop, write and

implement a voter registration plan and to support NAN in scheduling, logistics and voter registration activity. In November 2003, Archer Group consultants began working for Sharpton 2004, with one executive, Michael Pitts, later being named as the Deputy Campaign Manager.

6. LaVan Hawkins was a prominent businessman and owner of the Hawkins Food Group, Inc., a Detroit based corporation.

Applicable Law

7. The Act requires all political committees to file periodic reports of the committee's receipts and disbursements with the Commission. *See* 2 U.S.C. § 434(a)(1). In the case of committees that the authorized committees of a candidate for Federal office, these reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting period, *see* 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting period and for the calendar year to date, *see* 2 U.S.C. § 434(b)(2); and the total amounts of the committee's disbursements for the reporting period and the calendar year to date. *See* 2 U.S.C. § 434(b)(4). In-kind contributions shall be reported both as contributions and as expenditures. 11 C.F.R. § 104.13(c).

8. During the 2004 election cycle, the Act limited contributions to any candidate for Federal office or his authorized political committee, in the aggregate, to $2,000. *See* 2 U.S.C. § 441a(a)(1). Further, the Act states that no candidate or political committee shall knowingly accept any contribution in violation of the limitations imposed under this section. *See* 2 U.S.C. § 441a(f).

9. The Act provides that it is unlawful to make or receive contributions from a corporation in connection with an election for federal office. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a)-(b). Corporate contributions or expenditures include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of

value . . . to any candidate, campaign committee, or political party or organization, or any other person" in connection with any election to any political office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1). Any candidate who receives a contribution for use in connection with his campaign shall be considered as having received the contribution as an agent of the authorized committee for his candidacy. 2 U.S.C. § 432(e)(2).

10. The Act defines the term "contribution" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

11. The Act defines the term "expenditure" as including "anything of value ... made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).

12. Expenditures for travel relating to the campaign of a candidate receiving matching funds and seeking nomination for election to the office of President, shall be qualified campaign expenses and be reported by the candidate's authorized committee as expenditures. 11 C.F.R. § 9034.7(a). If the trip is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(1). If a trip includes campaign and non-campaign-related stop, the campaign-related portion of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(2). A stop is considered campaign-related if campaign activity, other than incidental contact, is conducted at the stop. *See id.*

Contributions Arising from American Express Charges and Payments

13. During his candidacy, Sharpton traveled extensively, and routinely mixed travel that was for both the Committee and NAN. The costs of this dual campaign and non-campaign travel should have been allocated between the Committee and NAN, pursuant to the Commission regulations, so that the Committee would pay for all campaign travel. However, Sharpton 2004 kept poor records of its activities and expenditures, which often resulted in NAN or other entities paying for travel expenses incurred by the campaign.

14. It was the practice to charge all travel expenses to Sharpton's American Express charge card. The card was then paid by using multiple accounts owned by Sharpton, NAN and/or the Committee. However, there were no ledgers kept to record the check numbers, the amounts, what loans or activities the checks were meant to pay or reimburse, for whom the payments or reimbursements were meant, and/or whether the checks were meant to be direct payments to the American Express card or reimbursements for payments already made. All of the payments that the Committee made to pay for campaign-related expenses charged on the American Express card were remitted in the form of checks or electronic transfers drawn on the Committee's account and paid to Sharpton.

15. Concern was expressed within the Committee about the problem of commingling expenses, and efforts were made to implement policies and procedures to ensure that the Committee properly segregated and allocated expenses between NAN and the Committee. In fact, consultants who worked with both NAN and Sharpton 2004 were instructed to develop an invoice to be used for allocating expenditures for shared events between the NAN and the Committee. Yet, there was a breakdown at the administrative level in the implementation of those procedures, and the adoption of proper recordkeeping and use of invoices by staff at both organizations continued to be a problem.

16. As a consequence of the Committee's poor recordkeeping, coupled with the practice of charging Committee, NAN and other expenses to Sharpton's personal American Express card and later paying the American Express account with monies drawn from various bank accounts, NAN and Sharpton's business entities often paid for campaign expenses that were not reimbursed or reported to the Commission.

17. The Commission determined that by applying the proper allocations to the travel expenses, the Committee incurred $509,188 in campaign-related expenses on Sharpton's American Express card, but had made payments on the card from its bank accounts in amounts totaling only $121,996. Thus, $387,192 was paid to Sharpton's American Express account for campaign expenses from other sources.

18. The Commission concluded that NAN made payments totaling $107,615 to the American Express card for Committee expenses, in violation of the prohibition against corporate contributions set forth in 2 U.S.C. § 441b.

19. Additionally, the Commission concluded that Sharpton's sole proprietorships, Rev-Als Production and Sharpton Media LLC, paid for the portion of campaign travel and expenses charged to the American Express card. Specifically, the Commission determined that Rev-Als Production paid $209,577 and Sharpton Media LLC paid $5,000 for campaign expenses. Finally, $65,000 in campaign-related travel and expenses charged to the American Express card was paid by unknown sources. All of these in-kind contributions made through the payments to American Express, should have been disclosed to the public in the Committee's disclosure reports as contributions and expenditures.

Payments to Vendors and Consultants

20. Although contrary to their original intent, NAN effectively subsidized the Sharpton 2004 presidential campaign by paying for vendors and consultants who performed work to benefit the Committee. Though originally retained by NAN in October 2003 to develop a voter registration plan and to conduct NAN's scheduling and advance logistics, the Archer Group began working exclusively for the Committee in November 2003. The work the Archer Group performed for the Committee was the continuation of work paid by NAN. Documents produced by the Committee show that Archer Group staff handled campaign travel arrangements, including travel reservations for Sharpton, during the October 2003 time period that the Archer Group was supposedly working exclusively for NAN.

21. The Commission determined that the Committee received approximately $73,500 from NAN for in-kind contributions, which consisted of payments to consultants and vendors for campaign-related work, including scheduling, logistics and voter registration services, fundraising and travel.

22. NAN made impermissible in-kind contributions to the Committee, in violation of 2 U.S.C. § 441b, totaling $181,115, which includes $107,615 in payments to the American Express account and $73,500 in direct payments to vendors and consultants.

23. Moreover, these contributions were not disclosed to the public in the Committee's disclosure reports in violation of 2 U.S.C. § 434(b).

Hawkins' Fundraising Event

24. On February 7, 2003, LaVan Hawkins held a fundraising event for the Sharpton Presidential Exploratory Committee at his home. The expenses associated with the fundraising event were subject to the limitations and reporting requirements of the Act. *See* 2 U.S.C. §§ 434(b)(2) and 441a(a)(1).

25. Sharpton traveled to the fundraising event with Hawkins on board a private, chartered jet that Hawkins regularly used for commuting between Detroit and Atlanta. Hawkins billed the plane trip to Hawkins Food Group's corporate account and Hawkins Food Group paid the invoice. The cost associated with the airplane trip to the fundraiser totaled $1,750.

26. The Act provides that the cost of voluntarily provided invitations, food and beverages are not "contributions" if they do not exceed $1,000 with respect to any single election. *See* 11 C.F.R. § 100.77. To the extent the Hawkins spent over $1000 for the event, it is considered an in-kind contribution under the FECA. The Commission's investigation revealed that the costs associated with the event, including food and beverages, rentals, catering staff, and services provided by a professional personal chef, valet and hostesses, totaled approximately $10,000. Accordingly, the Committee knowingly accepted an excessive in-kind contribution from LaVan Hawkins of more than $9,000, in violation of 2 U.S.C. § 441a(f), and failed to disclose the expenses associated with the fundraising event in violation of 2 U.S.C. § 434(b).

27. The Committee did not reimburse Hawkins Food Group the cost of the airfare, nor did it report the receipt of the contribution to the Commission. Thus, the Committee received a prohibited in-kind contribution totaling $1,750 from Hawkins Food Group, in violation of 2 U.S.C. § 441b, and failed to disclose the contribution in violation of 2 U.S.C. § 434(b).

Additional Violations

28. The Commission determined that a comparison of Sharpton 2004 reported activity and bank records reveals that Sharpton 2004 materially misstated its receipts and disbursements, as well as cash on hand in 2004. Receipts were understated by $110,279, primarily due to failure to report the receipt of $100,000 in matching funds. Disbursements were understated by $24,937, for the most part due to payroll and bank fees paid in March 2004. Ending cash on hand was understated by $96,537. The Committee has failed to file amended reports.

29. The Commission determined that the Committee has received $15,000 in loans from unknown sources. The Committee has represented that these funds derived from Rev-Als Productions, Inc. The Committee failed to appropriately disclose the receipts to the Commission, in violation of 2 U.S.C. § 434(b).

30. The Commission determined that the Committee received $10,500 in excessive contributions from individuals. Only one of these contributions was eligible for presumptive reattribution, but that no copy of a reattribution letter was provided; additionally, none of the contributions had been refunded. Thus, the Committee accepted $10,500 in excessive contributions from individuals identified during the audit.

V. Respondents violated the Act in the following ways:

1. Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(2) by failing to file complete and accurate reports disclosing all of the Committee's receipts and expenditures.

2. Reverend Alfred C. Sharpton and Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer, violated 2 U.S.C. §§ 441a(f) and 441b by knowingly accepting excessive and prohibited in-kind contributions.

3. This agreement does not establish or mean that any of the violations were knowing and willful.

VI. Respondents will cease and desist from violating 2 U.S.C. § 434(b) by failing to report complete and accurate disclosure reports. Respondents will cease and desist from violating 2 U.S.C. §§ 441a(f) and 441b by accepting contributions in excess of the limits as set forth in the Act or from prohibited sources.

VII. Respondents will file amended disclosure reports to disclose the receipts and disbursements described in this agreement.

VIII. Respondents will refund to its contributors, or in the alternative, disgorge to the U.S. Treasury, the $10,500 in unresolved excessive contributions received in violation of 2 U.S.C. § 441a. Respondents will disgorge to the U.S. Treasury the $9,000 in excessive contributions received from LaVan Hawkins in violation of 2 U.S.C. § 441a. Respondents will refund to the National Action Network, Inc., or in the alternative, disgorge to the U.S. Treasury, the $181,115 in impermissible corporate contributions received in violation of 2 U.S.C. § 441b with the first available funds. Respondents will disgorge to the U.S. Treasury the $1,750 in prohibited corporate contributions received from the Hawkins Food Group in violation of 2 U.S.C. § 441b.

IX. Respondents shall pay a civil penalty of Two Hundred and Eight Thousand Dollars ($208,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). The civil penalty will be paid as follows:

A. A payment of Thirty Five Thousand Dollars ($35,000), which is due no later than 90 days from the date this agreement becomes effective.

B. Thereafter, a second installment payment of One Hundred and Five Thousand Dollars ($105,000), which is due no later than August 1, 2009, and a final installment payment of Sixty Eight Thousand Dollars ($68,000), which is due no later than October 1, 2009.

C. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the Respondent. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to further overdue installments, pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

XII. Respondent shall have no more than 90 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission, except as otherwise expressly specified in Paragraphs VIII and IX.

XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY: _____ 4/8/09
Ann Marie Terzaken
Associate General Counsel
for Enforcement
Date

FOR THE RESPONDENTS:

_____ 2/17/09
Sharpton 2004 and Andrew Rivera,
in his official capacity as Treasurer
Date

_____ 2/17/09
Reverend Alfred C. Sharpton
Date

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	2009 FEB 19 A 10:54
	)	
National Action Network, Inc.	)	MUR 5408
and Alfred C. Sharpton, as President	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated an outside complaint as later supplemented by information the Federal Election Commission ascertained in the normal course of carrying out its supervisory responsibilities. The Federal Election Commission ("Commission") found reason to believe that National Action Network, Inc. ("NAN") and Alfred C. Sharpton, as an officer of NAN, violated 2 U.S.C. § 441b by making impermissible corporate contributions to Sharpton 2004 ("the Committee").

NOW, THEREFORE, the Commission and the National Action Network and Alfred C. Sharpton, in his capacity as President of NAN (collectively "Respondents"), having participated in informal methods of conciliation prior to a finding of probable cause to believe, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

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

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

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

Background

1. Reverend Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in the 2004 primary election. Sharpton filed a Statement of Candidacy on April 29, 2003 but has admitted that he was a candidate no later than October 2002.[1]

2. Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) was the principal campaign committee for Sharpton.

3. National Action Network, Inc. is a domestic non-profit corporation founded by Sharpton in 1991 and incorporated in the State of New York in 1994. Sharpton has served as President of NAN since its inception and the organization's primary purpose is to perform community and civil rights work.

Applicable Law

4. The Federal Election Campaign Act of 1971, as amended, ("the Act") The Act provides that it is unlawful for a corporation to make a contribution in connection with an election for federal office, or for any corporate officer to consent to the making of any contribution by the corporation in connection with an election for federal office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1).

5. The Act defines "contributions" or "expenditures" as "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, or

[1] On January 21, 2004, Sharpton and his exploratory committee entered into a Conciliation Agreement with the Commission in MUR 5363, admitting that Sharpton was a candidate at least as early as October 2002, yet failed to file his Statement of Candidacy, an Amended Statement of Organization, and two disclosure reports in a timely manner. *See* MUR 5363 Conciliation Agreement ¶¶ V.1-3.

any other person" in connection with any election to any political office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1).

6. Expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including the candidate, shall be qualified campaign expenses and be reported by the candidate's authorized committee as an expenditure. 11 C.F.R. § 9034.7(a). If the trip is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(1). If a trip includes campaign and non-campaign related stop, the campaign-related portion of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(2). A stop is considered campaign-related if campaign activity, other than incidental contact, is conducted at the stop. *See id.*

Travel for Shared Events Between NAN and Sharpton 2004

7. During his candidacy, Sharpton traveled extensively, and routinely mixed travel that was for both the Committee and NAN. The costs of this dual campaign and non-campaign travel should have been allocated between the Committee and NAN, pursuant to the Commission regulations, so that the Committee would pay for all campaign travel. However, Sharpton 2004 kept poor records of its activities and expenditures, which often resulted in NAN paying for travel expenses incurred by the campaign.

8. It was the practice to charge all travel expenses to Sharpton's American Express charge card. The card was then paid by using multiple accounts owned by Sharpton, NAN and/or the Committee. However, there were no ledgers kept to record the check numbers, the amounts, what loans or activities the checks were meant to pay or reimburse, for whom the

payments or reimbursements were meant, and/or whether the checks were meant to be direct payments to the American Express card or reimbursements for payments already made.

9. Concern was expressed within the Committee about the problem of commingling expenses, and efforts were made to implement policies and procedures to ensure that the Committee properly segregated and allocated expenses between NAN and the Committee. In fact, consultants who worked with both NAN and Sharpton 2004 were instructed to develop an invoice to be used for allocating expenditures for shared events between the NAN and the Committee. Yet, there was a breakdown at the administrative level in the implementation of those procedures, and the adoption of proper recordkeeping and use of invoices by staff at both organizations continued to be a problem.

10. As a consequence of the Committee's poor recordkeeping, coupled with the practice of charging Committee, NAN and other expenses to Sharpton's personal American Express card and later paying the American Express account with monies drawn from various bank accounts, NAN and Sharpton's business entities often paid for campaign expenses that were not reimbursed or reported to the Commission.

11. The Commission determined that by applying the proper allocations to the travel expenses, the Committee incurred $509,188 in campaign-related expenses on Sharpton's American Express card, but had made payments on the card from its bank accounts in amounts totaling only $121,996. Thus, $387,192 was paid to Sharpton's American Express account for campaign expenses from other sources.

12. The Commission concluded that NAN made payments totaling $107,615 to the American Express card for Committee expenses, in violation of the prohibition against corporate contributions set forth in 2 U.S.C. § 441b.

Payments to Vendors and Consultants

13. Although contrary to their original intent, NAN effectively subsidized the Sharpton 2004 presidential campaign by paying for vendors and consultants who performed work to benefit the Committee. Though originally retained by NAN in October 2003 to develop a voter registration plan and to conduct NAN's scheduling and advance logistics, the Archer Group began working exclusively for the Committee in November 2003. The work the Archer Group performed for the Committee was the continuation of work paid by NAN. Documents produced by the Committee show that Archer Group staff handled campaign travel arrangements, including travel reservations for Sharpton, during the October 2003 time period that the Archer Group was supposedly working exclusively for NAN.

14. The Commission determined that the Committee received approximately $73,500 from NAN for in-kind contributions, which consisted of payments to consultants and vendors for campaign-related work, including scheduling, logistics and voter registration services, fundraising and travel.

15. NAN made impermissible in-kind contributions to the Committee, in violation of 2 U.S.C. § 441b, totaling $181,115, which includes $107,615 in payments to the American Express account and $73,500 in direct payments to vendors and consultants.

V. Respondents violated the Act in the following ways:

1. National Action Network, Inc. violated 2 U.S.C. § 441b by making impermissible corporate contributions to Sharpton 2004; and

2. Alfred C Sharpton, in his official capacity as President of National Action Network, Inc., violated 2 U.S.C. § 441b(b)(2) by consenting to the making of impermissible corporate contributions to Sharpton 2004.

3. This agreement does not establish or mean that any of the violations were knowing and willful.

VI. Respondents will cease and desist from violating 2 U.S.C. §§ 441b by making prohibited corporate contributions in connection with an election for Federal office.

VII. Respondents will pay a civil penalty of Seventy Seven Thousand Dollars ($77,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). Respondents shall pay the civil penalty no later than May 1, 2009.

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

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

X. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission, except as otherwise expressly specified in Paragraph VII.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY: _____ 4/8/09
Ann Marie Terzaken
Associate General Counsel
for Enforcement
Date

FOR THE RESPONDENTS:

_____ 2/17/09
Reverend Alfred C. Sharpton
President, National Action Network, Inc.
Date

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Roger Stone **MUR: 5408**

I. INTRODUCTION

On May 3, 2005, the Commission found reason to believe that Roger Stone, a political consultant who reportedly worked for the Committee, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to Sharpton 2004 and Andrew A. Rivera, in his official capacity as Treasurer, (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) ("Sharpton 2004" or the "Committee"). The Commission authorized an investigation. After concluding its investigation, the Commission opted to exercise its prosecutorial discretion and take no further action as to Roger Stone.

II. FACTUAL AND LEGAL ANALYSIS

Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in the 2004 primary election and Sharpton 2004 was his principal campaign committee. Roger Stone was a political consultant who reportedly worked for the Committee at the beginning of the campaign.

The Commission found reason to believe the Stone made excessive contributions to the Committee, in violation of 2 U.S.C. § 441a(a)(1)(A), based, in part, on newspaper reports that Stone loaned in excess of $200,000 to NAN during the pendency of the Sharpton campaign, which was ultimately used to pay for Committee expenses. Stone was also alleged to have paid for Sharpton 2004 campaign events and related travel using Stone's personal credit card. In connection with these findings, the Commission authorized an investigation and subpoenaed documents and testimony from Roger Stone.

In his response to the Commission's interrogatories, Stone denied a "relationship" with the Committee and stated that he had made no contributions to the Committee and donated no goods or services. Stone Interrogatory Response at 1. Stone, who characterizes himself as a "personal friend" of Sharpton, did acknowledge soliciting contributions of $250 from fourteen individuals for the Committee during the period in which Sharpton was seeking to qualify for the Commission's presidential primary matching fund program. *Id.* at 2. Stone also acknowledges that he loaned $240,400 to the National Action Network ('NAN"). *Id.* A copy of the promissory note, which was attached to the response, provides details on five wire transfers to NAN totaling $225,000, as well as $15,400 for the costs associated with a NAN luncheon held at the Beverly Hilton Hotel and paid using Stone's credit card. Stone states he loaned the funds to NAN for "normal operating expenses ... and no other purpose." *Id.* at 1.

Neither Stone's response nor any records obtained during the course of the investigation, established that the Stone-derived funds were earmarked in any way for the Committee. Additionally, even though Stone made loans and contributions to NAN, no link has been established between Stone's loan to NAN and NAN's payments on behalf of the Committee.

Accordingly, the Commission has opted to exercise its prosecutorial discretion and take no further action against Roger Stone.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: LaVan and Wendy Hawkins
Hawkins Food Group

MUR: 5408

I. INTRODUCTION

On May 3, 2005, the Commission found reason to believe that LaVan and Wendy Hawkins made excessive contributions to Alfred C. Sharpton ("Sharpton") and his principal campaign committee, Sharpton 2004 and Andrew A. Rivera, in his official capacity as Treasurer, (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) ("Sharpton 2004" or the "Committee"), in violation of 2 U.S.C. §§ 441a(f). The Commission authorized an investigation, after which the Commission found reason to believe that Hawkins Food Group, Inc. ("Hawkins Food Group") made prohibited contributions to Sharpton 2004, in violation of 2 U.S.C. § 441b.

The Commission has opted to exercise its prosecutorial discretion and take no further action as to LaVan and Wendy Hawkins and, the now defunct, Hawkins Food Group.

II. FACTUAL AND LEGAL ANALYSIS

Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in the 2004 primary election. LaVan Hawkins, owner of the now defunct Hawkins Food Group, a Detroit based corporation, and his wife Wendy Hawkins, held a fundraising event for Sharpton's candidacy on February 7, 2003. *See* Hawkins Joint Resp. at 2.[1]

[1] The Hawkins made no monetary contributions to the Committee at the party, but on March 13, 2003, LaVan and Wendy Hawkins each contributed the statutory maximum of $2,000 to the Committee.

a. Excessive Contributions by LaVan and Wendy Hawkins

The Act provides that all in-kind contributions must be disclosed and must comply with the limitations and prohibitions of the Act. *See* 2 U.S.C. §§ 434(b) and 441a(a). Specifically, the Act states that no person shall make contributions to a candidate for federal office or his authorized political committee, which in the aggregate, exceeds $2,000, *see* 2 U.S.C. § 441a(a)(1)(A), and no candidate or political committee shall knowingly accept contributions in violation of the limitations and prohibitions of the FECA. 2 U.S.C. § 441a(f). When one hosts a fundraising event to support a candidate, the cost of voluntarily provided invitations, food and beverages are considered in-kind contributions if they exceed $1,000 with respect to any single election. *See* 11 C.F.R. § 100.77.

The investigation established that the expenses associated with the Hawkins fundraising event resulted in an excessive in-kind contribution by LaVan Hawkins totaling approximately $9,239.[2] By failing to reimburse the Hawkins for the cost of the fundraiser, the Committee knowingly accepted the excessive contribution, in violation of Section 441a(f). The investigation established that the fundraising event was planned, hosted and paid for by LaVan Hawkins, and that Wendy Hawkins had no actual role in the event. Hawkins Joint Resp. at 2; Wendy Hawkins August 23, 2007 Supplemental Response ("Wendy Hawkins Supp. Resp.") at 1. Although the event was held in their home and Wendy Hawkins' name appears on the hostess and catering vendor invoices,

[2] Because the Hawkins were unable to provide invoices for all of the party's expenses, this figure is calculated using the estimated values of food and beverages, rentals, catering staff, and services provided by a professional personal chef, valet and models, that were obtained from businesses providing comparable services in the Atlanta area. This excessive contribution amount includes a deduction of the $1,000 in-kind contribution that is permissible by statute for such items. *See* 11 C.F.R. § 100.77. The calculation for the event's cost does not include the $325 worth of desserts purchased by Mrs. Hawkins.

the expenses associated with the event were paid by LaVan Hawkins. Additionally, only LaVan Hawkins' name appears on the Committee's fundraiser invitation. *Id.*[3] Accordingly, the Commission exercises its discretion to take no further action with respect to Wendy Hawkins.

In June 2005, LaVan Hawkins was convicted of federal perjury and wire fraud charges stemming from a corruption scheme involving the payment of gifts and bribes to the Philadelphia city treasurer in exchange for city contracts. Mr. Hawkins was sentenced to 33 months of incarceration, which he is currently serving in a federal penitentiary, and his conviction was affirmed by the Third Circuit Court of Appeals in August 2007. His attorney also represents to the Commission that his client's personal assets and those of his business, Hawkins Food Group, were seized by the Department of Justice upon his arrest. Given that Hawkins is currently incarcerated and without assets and any source of income, the Commission, as a matter of prosecutorial discretion, decided to take no further action with respect to LaVan Hawkins' violation.

b. Prohibited contributions by the Hawkins Food Group, Inc.

The Act provides that expenditures for travel by any individual related to the campaign of a candidate seeking nomination for election to the office of President shall be qualified campaign expenses and be reported by the candidate's authorized committee as an expenditure. 11 C.F.R. § 9034.7(a). Moreover, the Act prohibits any corporation from making contributions in connection with an election for federal office. 2 U.S.C. § 441b(a). Corporate "contributions" or "expenditures" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or

[3] Wendy Hawkins also states that during the time period surrounding the event she and Mr. Hawkins were going through a period of separation and that he rarely spent time in their Atlanta home. Hawkins Joint Resp. at 2. The Hawkins divorced on September 20, 2004.

anything of value . . . to any candidate, committee, or political party or organization, or any other person" in connection with any election to any political office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1).

LaVan Hawkins provided Sharpton transportation to the February 7, 2003 fundraising event aboard the private, chartered jet that Hawkins used for commuting between Detroit and his home in Atlanta. The trip was charged to the Hawkins Food Group corporate account and the Committee did not reimburse LaVan Hawkins or the Hawkins Food Group for the cost of the transportation.[4] Hawkins Joint Resp. at 2; LaVan Hawkins Supp. II Resp. at 1. Hawkins has argued that he did not consider the plane ride as a contribution to the Committee because Sharpton was simply allowed to fly on the plane with Hawkins on a previously planned the trip. However, the fact that Hawkins was already planning to make the plane trip is irrelevant; it is the benefit provided to the Committee by not having to pay for Sharpton's travel expenses that resulted in the in-kind contribution. *See* Sharpton 2004 Factual and Legal Analysis at 16-17. Accordingly, there is sufficient evidence to conclude that Hawkins Food Group made a prohibited in-kind contribution of $1,750 to the Committee, in violation of 2 U.S.C. § 441b.[5]

Hawkins Food Group was never named as a respondent in this matter, and ceased to exist soon after LaVan Hawkins was indicted. LaVan Hawkins Supp. Resp. at 2. At

[4] Though Hawkins considers the travel aboard the chartered jet to be personal because it was unrelated to Hawkins Food Group business, Hawkins does not believe that he reimbursed Hawkins Food Group for the cost of Sharpton's airfare because it was not his standard practice to repay the company for personal travel invoiced and paid on the company's account. LaVan Hawkins Supp. II Response at 1.

[5] Respondents provided no invoices for this specific trip so we estimated the cost of the trip by taking the airfare that the chartered jet company typically billed Hawkins for similar trips from Detroit to Atlanta and dividing it in half ($3,509 x 50%=$1,750), since Sharpton and Hawkins were the only two passengers on that flight. Thereby, arriving at an estimated value of $1,750 for the airfare.

that time, its assets were seized and it has since remained a dormant entity without officers, assets, address, custodian of records or agents acting on its behalf. *Id.* Given the fact that Hawkins Food Group is defunct and its principal, LaVan Hawkins, is currently incarcerated and without resources, the Commission determined, as a matter of prosecutorial discretion, to take no action against the Hawkins Food Group.