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March 8, 2005

RECEIVED
FEDERAL ELECTION
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2005 MAR 14 P 3:03

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BY MAIL AND EMAIL
Alexandra Doumas, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Thomas Willsey; MUR 5453

Dear Ms. Doumas:

Pursuant to our discussion today, you have permitted me to submit the attached submission on behalf of Mr. Willsey in this matter via email and in pdf format after 5:00 p.m today. As I explained in our phone call, there is a significant snowstorm today in Connecticut that would not permit me to have traveled to my office from Stamford before the close of business today. The original is being mailed to you today as well. I expect to be traveling most of the remainder of this week but would like to contact you next week to discuss this matter further.

Thank you for your consideration in providing me with additional time to submit this document.

Very truly yours,

O'BRIEN, TANSKI & YOUNG, LLP

Stephen V. Manning

SVM/bms
Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5453
Thomas Willsey	)	

MEMORANDUM OF THOMAS WILLSEY IN SUPPORT OF NO ACTION

The Respondent, Thomas Willsey (Mr. Willsey), was informed via a letter date stamped January 28, 2005 that, on January 24, 2005, the Federal Election Commission (Commission) found that there is reason to believe that Mr. Willsey "knowingly and willfully violated 2 U.S.C. §§444b(a) and 441f, ..." While the letter reflects that the Commission's finding was based upon information obtained "in the normal course of carrying out its supervisory responsibilities," it is unclear what that information is. What is clear is that Mr. Willsey's input has not yet been presented to the Commission. With the benefit of Mr. Willsey's information, we submit that the Commission should not find probable cause to believe that Mr. Willsey knowingly and willfully violated the campaign finance laws. Indeed, for the reasons that follow, the Commission should take no action as to Mr. Willsey in this Matter Under Review.

Statement of Relevant Facts

In 2000, Mr. Willsey was President of Arthur A. Watson & Co., Inc. ("Watson" or "the Company"), an insurance brokerage firm located in Wethersfield, Connecticut. The firm began in 1929 and had operated under the name of Arthur A. Watson & Co., Inc. since 1977. Until the events giving rise to this matter, the Company had an excellent reputation and unblemished record over the course of its 70-year history.

In a process that began in the fall of 1999, the Company in January of 2000, was selected to be the insurance broker of record for the City of Waterbury. In April of 2000, Michael Watts,

an officer of the Company, approached Mr. Willsey and told him that a client of the Company had asked if people at Watson would consider making campaign contributions to the Mayor of Waterbury, Philip Giordano. This client was close to Mayor Giordano, who had declared his candidacy as the Republican candidate for US Senate against Senator Joseph Lieberman. Mr. Willsey told Mr. Watts that he would not make such a contribution and did not think that other Watson employees would either.[1]

Mr. Watts persisted and asked Mr. Willsey if he, Mr. Willsey, would speak with two specific employees who were involved with the Waterbury account and reported directly to Mr. Willsey, about the client's desire for contributions to the campaign. Mr. Willsey told Mr. Watts that he, Mr. Willsey, would talk to the two individuals about the client's request for a contribution, but that he would not pressure either to contribute. Mr. Willsey told Mr. Watts that he would make sure the employees understood that there was no requirement or pressure that they make such a contribution; that there would be no adverse consequences to them if they chose not to; that he, Mr. Willsey, was not making such a contribution; and that they should make a contribution only if **they** wanted to. Mr. Willsey expected both would decline and that would be the end of the issue.

When Mr. Willsey spoke to the two individuals, he did in fact make sure they understood that there was no requirement or pressure that they make such a contribution. Mr. Willsey made clear that there would be no adverse consequences to them if they chose not to contribute and that in fact he was not contributing. Mr. Willsey told them that they should make a contribution only if they wanted to. To Mr. Willsey's surprise, one of the individuals told Mr. Willsey that he

[1] Mr. Willsey had never before, or thereafter, met or communicated in any way with Mr. Giordano or anyone associated with his campaign for the United States Senate.

wanted to contribute to the Giordano campaign.[2] At this point, Mr. Willsey had not even considered the possibility of the Company making an employee whole for contributing, nor had Mr. Watts raised this issue.

At about the same time, Mr. Watts spoke with other Company employees about contributing. Since Mr. Willsey was not present when Mr. Watts spoke to them, he does not know what Mr. Watts said to them. However, when Mr. Watts next raised the matter with Mr. Willsey, he told Mr. Willsey that he and three other employees, were going to contribute to the campaign. It was only after informing Mr. Willsey that he and these three other employees had decided to make contributions, that Mr. Watts asked Mr. Willsey if the Company could make the four of them whole.

In response to Mr. Watts' inquiry, and the pressure that Mr. Watts exerted on this issue, Mr. Willsey decided to consult with outside legal counsel. On April 17, 2000, as reflected by the legal bills of the law firm, Mr. Willsey had two phone conversations with outside counsel regarding the issue. On April 19, 2000, Mr. Willsey spoke again with outside counsel regarding the matter. During the course of these conversations, counsel mentioned the possibility of a PAC, and made it clear to Mr. Willsey that, as senior management, he could not compel the employees to contribute and that it would be illegal for the Company to charge the contributions through Company expense accounts.

From the April 19, 2000 conversation, however, Mr. Willsey understood (mistakenly) that it would not violate the law for a corporation to adjust the compensation of employees and that this was a legal way to make the employees whole. While outside counsel did not advocate

[2] The other individual told Mr. Willsey that he would not make a contribution, and suffered no adverse consequences whatsoever.

to Mr. Willsey that the Company pursue such a course, Mr. Willsey mistakenly understood from the conversation that such a course of action (adjusting compensation) was within the discretion and authority of senior management and that it complied with the letter of the law. As President of the Company, Mr. Willsey had exercised authority and discretion over compensation and payroll issues for years. Thus, Mr. Willsey understood from these discussions that he had the lawful authority to make adjustments to the contributors' compensation plans, so as to make them whole.

Mr. Willsey informed others at the Company that he had spoken with outside counsel and conveyed to them his understanding that it was legal for the Company to exercise its discretion with respect to compensation for these persons. Given his understanding that it was legal to exercise his authority in the area of compensation as to these employees, Mr. Willsey considered what adjustments to compensation were appropriate for these individuals. Each of the adjustments that were made to the compensation of the four individuals was, in Mr. Willsey's mind, independently and economically justified.

Mr. Watts and the other principal from the Company's Bond Department were compensated generally by receiving percentages of commissions earned on construction bonds that they arranged for clients. After taking into consideration the outstanding performance of the Bond Department over the prior few years (88% revenue growth from 1996 to 1999 and 27.5% revenue growth in 1999), a decision was made by Mr. Willsey to enhance the percentage of commission paid on "new business," that resulted in commission income in excess of a newly-established and rather significant threshold. This adjustment to the compensation formula was made retroactive to January 1, 2000. Because there had been two new bonds that year for an unrelated account where the commissions were in excess of this newly-established threshold,

this retroactive adjustment resulted in Mr. Watts and his colleague from the Company's Bond Department being made approximately whole.

Over the years, Mr. Willsey, as President of the Company, had made numerous adjustments to compensation formulas and packages for a great many Company employees. Many of those adjustments were retroactive to the beginning of the year in which they were made.[3] Further, and reflecting that Mr. Willsey believed at the time that the adjustment in the new bonds compensation formula to be independently, economically justified, that new tier was a permanent adjustment to the compensation formula, and remained in effect until the respective departures of bond department principals from the Company in November, 2002 and April, 2004.[4]

The third employee, a commercial lines producer, was "made whole" by way of a referral bonus on new bonds that had been written for accounts he shared with the Bond Department.

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[3] Indeed, in the same quarter of 2000 that the adjustment to the new bonds compensation formula was made and applied retroactive to January 1, 2000, Mr. Willsey also adjusted the compensation formula for two life producers (who did not make campaign contributions), and made that adjustment retroactive to January 1, 2000. Similarly, in Q2 of 2000 the Company instituted an incentive compensation plan for Employee Benefit Account Executives, which was also made retroactive to January 1, 2000. Also, in Q3 1999, Mr. Willsey had adjusted the formula for calculating the base salary of personal insurance producers and made that adjustment retroactive to January 1, 1999. Mr. Willsey did so after having adjusted the formula for new business commissions for personal insurance producers in Q3 1998, and having made that adjustment retroactive to January 1, 1998. These are but a few of many such examples.

[4] In 2000, there were new bonds written by the Company that resulted in increased commissions under the new tier of the adjusted formula. In 2001, there was an additional new bond written by the Company that resulted in increased commissions. Until they left the Company, each employee remained eligible to earn a commission under the new tier adjustment established in 2000. Like the 2000 adjustment to the new bonds compensation formula, the new incentive compensation for Employee Benefit Account Executives remained in effect until the departure of the pertinent employees. The Q2 2000 adjustment to the compensation formula for the two life producers remains in effect today.

Under the policy then in existence at the Company (and still in effect today), a producer could determine whether the payment of a referral bonus to another employee was appropriate when new business was written. In this case, Mr. Watts as Manager of the Bond Department informed Mr. Willsey that the commercial lines producer would receive the standard referral bonus on several bonds that had been written earlier in 2000 on accounts the producer shared with the Bond Department. Thus, without any adjustment to a compensation formula or bonus plan or policy, the standard referral bonuses resulted in this producer receiving an additional sum making him approximately whole.

The fourth employee, also a commercial lines producer, was "made whole" by way of an adjustment to his commission payments. In the normal course, he was eligible to receive a commission at mid-year based on a percentage of the growth of his book of business over the first six months of the year. His book of business had grown dramatically in 1999 (41%) and continued to grow in 2000. Under the circumstances, this producer was paid at mid-year a commission based on a percentage of the growth of his book of business that was consistent with the typical percentage used at year-end rather than the lower percentage normally used at mid-year. The mid-year adjustment increased his commission such that he was made approximately whole.

With respect to all these adjustments, Mr. Willsey understood and believed that they met the letter of the law. He had not approached the individuals at issue, in no way coerced them to make the contributions, and the Company had not attempted to disguise or hide the payments as non-existent expenses. None of the employees whose compensation was adjusted were even asked to provide proof that they had in fact made the contributions to the Giordano campaign. The decision to adjust their compensation was made and whether they actually made the

contributions was up to them. Mr. Willsey felt each of these adjustments to compensation to be economically justified.

Contrary to the position of the General Counsel's Office, these adjustments were not hidden or disguised. That is because Mr. Willsey understood them to be lawful. After conferring with outside counsel, he informed others at the Company that he understood them to be lawful. These adjustments were properly booked to compensation. The accounting for these adjustments to compensation was open and transparent, not hidden or disguised.

Mr. Willsey's actions are wholly inconsistent with the actions of a person who "knowingly and willfully" violated the law. If Mr. Willsey had intended to violate the law, he would not have called an attorney about the issue. Moreover, he would not have left the adjusted compensation mechanisms in place; he would have returned them to what they had been. If Mr. Willsey believed that he was committing a crime, he would have committed the crime with the least amount of expense to the Company and with the greatest chance to avoid detection. The least expensive way, as well as the best way to avoid detection, would have been to simply alter or create false expenses and reimburse for those false expenses through an employee's expense account. This would have resulted in the company paying only $2000 and having a $2000 tax deduction for each payment. The Company would not have had to pay additional social security and medicare taxes that it was required to pay when it adjusted the compensation of these employees.

Further, Mr. Willsey had no motivation to knowingly and willfully violate the law. Indeed, Mr. Willsey had every incentive **not to** knowingly and willfully violate the law. Mr. Willsey has devoted his entire career, which spans over thirty three years in the insurance field, to acting in an honorable and professional manner at all times. Mr. Willsey takes great personal

and professional pride in the reputation that he has earned for honesty and integrity. To act contrary to that hard-earned reputation would be to act contrary to his own business and economic interests.

Mr. Willsey would never have knowingly and deliberately violated any law. By doing so he would have had nothing to gain, and everything -- a life time of hard and honest work in his profession – to lose. And wholly apart from Mr. Willsey's good character and sense of right and wrong, it is against all common sense to believe that someone would knowingly and willfully violate the law under circumstances where there was no benefit to be derived from such an action, while there were potentially devastating adverse consequences from such action.

That the Company made a decision to enter a misdemeanor guilty plea and enter into a Conciliation Agreement with the Commission is no indication that Mr. Willsey personally "knowingly and willfully" violated the relevant statutes. The Company's misdemeanor plea says nothing about whether Mr. Willsey, as an individual, knowingly and willfully violated the law. Indeed, as reflected above, Mr. Willsey's state of mind was the direct opposite of a "knowing and willful" violation of the statutes. Since Mr. Willsey's state of mind did not contribute to the Company's intent as required under the statutes, the Company's plea and Conciliation Agreement provide no support whatever to an assertion that Mr. Willsey knowingly and willfully violated the law.

Finally, Mr. Willsey asks the Commission to consider the devastating affect that a finding that he "knowingly and willfully" violated the elections campaign statutes would have for him. Mr. Willsey's license, livelihood and long-standing and exemplary career would be in jeopardy due to such a finding. The affect on Mr. Willsey personally and on his family would be grossly disproportionate to his conduct. It is respectfully submitted that such a penalty should not be

exacted based upon Mr. Willsey's actions in this matter. These actions were taken without the requisite intent, and were taken only because Mr. Willsey had a mistaken understanding that they complied with the letter of the law. That mistaken understanding emanated from conduct that should be encouraged and not penalized: seeking advice of counsel concerning the campaign finance laws.

Respectfully Submitted,

RESPONDENT THOMAS WILLSEY

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