BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:	)	
Mr. Joseph Mandile	)	**Matter Under Review 5628**
Respondent	)	

RESPONSE OF MR. JOSEPH MANDILE
TO THE COMMISSION'S REASON TO BELIEVE FINDING

I. INTRODUCTION

On behalf of Mr. Joseph Mandile, we hereby respond to the Commission's finding of reason to believe in the above captioned matter under review. For the reasons set forth herein, the Commission should find no reason to believe Mr. Mandile violated the Federal Election Campaign Act (the "Act") and dismiss him from this matter under review.

In short, the Commission's claims against Mr. Mandile are time barred by the applicable five-year federal statute of limitations and, thus, the Commission is without authority to seek a civil penalty from Mr. Mandile.

However, even if the claims are not time barred, the Commission has improperly alleged knowing and willful violations. According to the Factual and Legal Analysis, Mr. Mandile simply acted on instructions and was even initially unaware of the purpose of the bonuses. Somehow from this the Commission makes the factual and legal leap to finding that Mr. Mandile "knowing and willfully" violated the Act. In support of this finding, the Commission cites a federal case involving a different statute which held that one may draw the inference of a knowing and willful act from the defendant's "elaborate scheme for disguising" their actions.

Putting aside for the moment that the case is inapplicable, the Commission does not even meet this standard. At no point does the Commission provide any evidence that Mr. Mandile was the driving force in any "scheme," elaborate or otherwise, to disguise any actions.[1] There is simply no predicate for a finding of knowing and willful conduct by Mr. Mandile. Moreover, the Commission's knowing and willful finding against Mr. Mandile runs counter to FEC precedent. In prior cases, the Commission has either made non-knowing and willful findings against similarly-situated individuals, or simply issued letters of admonishment and taken no further action. The Commission has presented no facts warranting the application of a different standard in this matter.

II. THE COMMISSION'S CLAIMS ARE TIME-BARRED BY THE FEDERAL STATUTE OF LIMITATIONS

As the Commission is well aware, the Federal Election Campaign Act does not contain an internal statute of limitations for civil claims, and, thus, the five-year statute of limitations found in 28 U.S.C. § 2462 applies to any enforcement action in which the Commission pursues a civil penalty. *See Federal Election Commission v. Williams*, 104 F.3d 237, 239-40 (9th Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997); *Federal Election Commission v. Christian Coalition*, 965 F. Supp. 66, 69 (D.D.C. 1997); *Federal Election Commission v. National Right to Work Committee, Inc.*, 916 F. Supp. 10, 13 (D.D.C. 1996); *Federal Election Commission v. National Republican Senatorial Committee*, 877 F. Supp. 15, 17 (D.D.C. 1995).

For violations of the Federal Election Campaign Act, the five-year statute of limitations begins to run when the events at issue first occur or when the alleged violation is committed, not when the circumstances are first reported to the Commission. *See Christian Coalition*, 965 F.

[1] Nor does the allegation that a public accounting firm advised the company to reimburse political contributions using a bonus system instead of expense reports alter the equation as to Mr. Mandile.

Supp. at 70; *National Right to Work Committee*, 916 F. Supp. at 13; *National Republican Senatorial Committee*, 877 F. Supp. at 19-20.[2]

With respect to the date of any alleged violation of the Act by Mr. Mandile, the Factual and Legal Analysis is conspicuously vague. The Commission states only that "AMEC appeared to have violated the Federal Election Campaign Act of 1971 . . . by reimbursing approximately $17,000 of its employees' contributions to federal election campaigns from at least 1998 to 2000." The Factual and Legal Analysis makes no other reference to the date (or dates) Mr. Mandile allegedly violated the Act.

We understand from the record that December 1999 is the last date on which any reimbursed contributions were allegedly made in this case. The materials presented contain no specific allegations of activity continuing into 2000, and, more relevant to Mr. Mandile personally, no evidence that any specific "grossed up" special bonuses were issued in 2000. Accordingly, the Commission's claims against Mr. Mandile are time barred by the five-year statute of limitations. For this reason alone, the Commission should dismiss Mr. Mandile from this matter.

III. THE COMMISSION IMPROPERLY ALLEGES KNOWING AND WILLFUL VIOLATIONS OF THE FEDERAL ELECTION CAMPAIGN ACT

Even if the Commission's claims are not time barred, the Commission improperly alleged knowing and willful violations. As we explain more fully below, the facts, as presented in the Factual and Legal Analysis, demonstrate that a knowing and willful finding against Mr. Mandile is unjustified by the facts and not supported by law or Commission precedent.

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[2] Administrative procedures such as the initiation of an investigation or a reason to believe determination do not toll the statute of limitations. *See National Right to Work Committee*, 916 F. Supp. at 14; *National Republican Senatorial Committee*, 877 F. Supp. at 20.

According to the Factual and Legal Analysis, Mr. Mandile acted on instructions to pay bonuses to employees but was initially unaware of the purpose of the bonuses. *See* Factual and Legal Analysis at 2, Lines 8 – 10, 20 - 21. The Commission goes on to state that Mr. Mandile "later learned that [the bonuses] constituted reimbursements for political contributions," *id.,* but the Commission does not say *when* Mr. Mandile learned that these bonuses constituted reimbursements for political contributions, or, more significantly, whether Mr. Mandile knew what he was allegedly doing was illegal. No predicate exists in the record for the Commission to have found a "knowing and willful" violation.

The Act enables the Commission to impose enhanced civil penalties upon parties who commit knowing and willful violations of *federal election laws*. *See* 2 U.S.C. § 437g(a)(5)(B); 11 C.F.R. § 111.24(a)(2). However, according to a controlling decision by the District of Columbia Circuit, an individual commits a knowing and willful violation of a federal election law when his behavior is "equivalent to a knowing, conscious, and deliberate flaunting of the Act." *A.F.L.-C.I.O. v. Federal Election Commission*, 628 F.2d 97, 101 (D.C. Cir. 1980) (internal citation omitted).[3] In other words, an individual must have *specific knowledge* that his actions violated the Act to have acted "knowingly and willfully."

The Commission does not allege that Mr. Mandile was aware of the law. The Commission merely notes that Mr. Mandile later learned that the bonuses constituted reimbursements for political contributions. A mere ultimate awareness that bonuses constitute reimbursements for political contributions is not "equivalent to a knowing, conscious, and deliberate flaunting of the Act." *Id.*

[3] The Factual and Legal Analysis cites this controlling decision, but inexplicably relegates it to a footnote.

The Second and Fifth Circuit cases cited in the Commission's Factual and Legal Analysis are inapplicable because they involve federal criminal charges of fraud and false statements pursuant to 18 U.S.C. § 1001, a statute that is not at issue in this matter. *See United States v. Whab*, 355 F.3d 155, 157-58 (2d Cir. 2004); *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). The Supreme Court has noted that the meaning of the term "willfully" often depends upon the context of the statute. *See Bryan v. United States*, 524 U.S. 184, 191 (1998).

Further, even if these cases were somehow applicable (and they are not), a prosecutor must still present sufficient evidence that an individual "acted with the purpose to do something the law forbids, and with an awareness of the generally unlawful nature of his actions," even if the intent element does not require proof that the individual *specifically knew* the conduct was criminal. *See Whab*, 355 F.3d at 160, 161. The Commission has not met this standard, and its effort to elide the matter by claiming the existence of an "'elaborate scheme for disguising' . . . corporate political contributions" does not provide any predicate for a finding that Mr. Mandile authored any scheme or was a driving force in it. In fact, as the Commission specifically concedes, he was not.

The FEC's effort to extend a knowing and willful finding to Mr. Mandile appears, moreover, unprecedented. In prior FEC "conduit" cases, the Commission has held that individuals acting at the direction of other persons had either committed non-knowing and willful violations or, in some cases, took no action against such persons, other than sending letters of admonishment. For instance, in MUR 5187, the Commission took no further action against numerous "conduits" who "appear to have been minor players in the [reimbursement] scheme perpetrated" by others. General Counsel's Report #3, MUR 5187 at 7, Line 5. In that case, the contribution reimbursement scheme used friends and family members as conduits for reimbursed

contributions. The report did not opine on whether the conduits were aware that their actions were illegal, but nevertheless recommended that the Commission take no further action against the family and friends "[b]ecause of the relatively limited nature of their involvement" as well as the fact that the relevant company, Mattel, had self-disclosed, as has AMEC in this instance. *Id* at 7, Lines 5 – 6.

Likewise, in FEC Matter Under Review 4931, a senior officer of Audiovox Corporation directed a political contribution reimbursement scheme involving dozens of corporate officers and employees. To effect the reimbursement scheme, some employees submitted falsified expense reports while others were paid out of petty cash. In settlement of the case, some officers and employees admitted to non-knowing and willful violations of 2 U.S.C. § 441f, while the Commission took no further action against numerous other employees, including some senior employees who were aware of the illegality of the scheme and had made reimbursed contributions. *See generally* MUR 4931, General Counsel's Report #7.

In another matter even more similar to the instant action involving Mr. Mandile, the Commission agreed to allow a secretary who had been instructed to process federal political contributions by her employer that were later illegally reimbursed to admit to non-knowing and willful violations of 2 U.S.C. § 441f. *See* First General Counsel's Report, MUR 4398.

According to the Factual and Legal Analysis in the instant matter, Mr. Mandile was merely acting on instructions, unaware until "later" that the bonuses were to reimburse political contributions. The Commission does not allege that Mr. Mandile was otherwise involved in any scheme other than acting on instructions, or that he had any idea the alleged bonuses were illegal. Mr. Mandile is, thus, similarly situated to the "minor players" in MUR 5187 and the secretary in MUR 4398 in that he was merely acting on instructions.

IV. CONCLUSION

For the foregoing reasons, we respectfully request that the Commission find no reason to believe Mr. Mandile violated the Act and dismiss Mr. Mandile from this matter under review.

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Respectfully submitted,

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