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BEFORE THE FEDERAL ELECTION COMMISSION

2005 DEC -6 P 2:25

In the Matter of	)	
	)	
American Target Advertising, Inc.	)	
The Viguerie Company	)	MUR 5635
ConservativeHQ.com, Inc.	)	
Conservative Leadership Political	)	
Action Committee and David Fenner,	)	
in his official capacity as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (the "Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that American Target Advertising, Inc. ("ATA"), the Viguerie Company ("TVC"), and ConservativeHQ.com, Inc. ("CHQ") (collectively referred to herein as the "Corporate Respondents") violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act").[1] The Commission further found probable cause to believe that Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer ("CLPAC" or the "Committee") violated 2 U.S.C. §§ 434(b), 441a(f), and 441b(a).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation 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.

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[1] All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

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. Respondent TVC is a corporation, incorporated in Virginia, that specializes in fundraising for nonprofit entities.

2. TVC owns ATA, a Virginia corporation that provides direct mail marketing services. ATA pioneered mass cause-related direct mail fundraising starting in 1965. ATA's chairman is Richard Viguerie, who serves as the moderator and commentator on an Internet website operated by CHQ.

3. Conservative Leadership Political Action Committee ("CLPAC" or the "Committee") is a multicandidate political committee within the meaning of 2 U.S.C. § 431(4) and is not an authorized committee of any candidate. David Fenner is the treasurer of CLPAC. CLPAC registered as a political committee in 1972. Total expenditures for the period 1993 through 1999 were $280,625 and total receipts were $292,564 – an average of approximately $40,000 in receipts and expenditures per year. Expenditures ranged from $4,818 in 1993 to $128,239 in 1998.

4. On July 6, 2000, CLPAC entered into a contract with ATA (the "Contract") that resulted in a direct mail, telemarketing, and Internet fundraising program to occur in the four months before the 2000 election. At a later date, the parties orally agreed to amend the Contract.

Representatives from ATA and CLPAC signed a written instrument reflecting this understanding on September 28 and October 11, respectively.

5. The Contract was a "no-risk" contract. It provided that CLPAC would not be responsible for the costs of the fundraising in excess of the amount of money raised, and that the Corporate Respondents would have no recourse against CLPAC for fundraising program losses.

6. ATA contracted much of the CLPAC program to other vendors, among them TVC and CHQ. ATA rented mailing lists from TVC and hired CHQ to provide Internet fundraising services. ATA also contracted with the other Respondents and vendors to provide additional services and to make advances to cover the initial cost of postage.

7. The fundraising program involved thirty-nine mailings. Fifteen of the mailings (a total of over 6 million pieces of mail) opposed the candidacy of Albert Gore, Jr. and thirteen of them (almost 4.8 million pieces of mail) opposed Hillary Rodham Clinton.

8. During the period beginning on August 5, 2000, and ending on November 7, 2000 (the date of the general election), expenses for the direct mail fundraising program exceeded revenues. As a result, ATA incurred net losses. Under the terms of the contract, CLPAC was not required to pay ATA or any of the other vendors to offset these net losses. ATA subsequently negotiated with the other vendors to reduce or eliminate all of the outstanding debts. In addition, pursuant to the terms of the amended contract, the escrow account into which contributed funds were deposited disbursed $465,000 to CLPAC out of the revenues from the direct mail program. However, ATA retained exclusive rights to market and receive all income from the housefile mailing list that was generated as a result of the direct mail program.

9. CLPAC failed to identify the occupation and/or name of employer for 93% of the contributions it reported from January 1, 1999, through December 31, 2000. CLPAC also failed to report the purpose of 56 disbursements during the same period totaling $1,848,416. Furthermore, CLPAC initially reported debt associated with the direct mail program but then amended its reports for the 2000 calendar year to show no debt owed by the Committee to ATA or any other vendor involved in the direct mail program.

Applicable Law

10. The Act defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or 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). "Anything of value" includes all in-kind contributions, i.e., "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods and services." 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

11. The Act prohibits any corporation from making a contribution in connection with any federal election and prohibits any political committee, or other person, from knowingly accepting or receiving corporate contributions. 2 U.S.C. § 441b(a). The term "person" includes a corporation or any other organization or group of persons. 2 U.S.C. § 431(11).

12. The Act defines contributions to include loans and advances. 2 U.S.C. § 431(8)(A)(i). Excluded from this definition, however, are loans and advances made in the ordinary course of business by federally-chartered or federally-insured depository institutions. 11 C.F.R. § 100.7(b)(11).

13. The Act provides that no person shall make contributions to a political committee in any calendar year, which, in the aggregate, exceed $5,000, 2 U.S.C. § 441a(a)(1)(C), and that no political committee shall knowingly accept such contributions. 2 U.S.C. § 441a(f).

14. The Act requires committees to identify contributors who make aggregate contributions of over $200 in a calendar year. 2 U.S.C. § 434(b)(3)(A). The Act requires committees to report the name and address of any person to whom the committee makes disbursements that total over $200 in a calendar year and to state the purpose of the disbursement. 2 U.S.C. § 434(b)(5)(A).

15. According to the Act, all campaign debts and obligations must be reported in a committee's periodic disclosure filings. 2 U.S.C. § 434(b)(8). For as long as debts remain outstanding, a political committee is required to continuously report their existence until such time as they are extinguished. 11 C.F.R. § 104.11(a). All outstanding obligations are to be reported on FEC Form 3 Schedule D, with specific references to: the amounts owed; the outstanding balance as of the beginning of the reporting period; the amounts incurred during that reporting period; payments made during that reporting period; and the outstanding balance at the close of the reporting period. Committees are also required to enclose with this schedule a statement setting out the amount(s) paid and explaining the conditions under which such obligations or debts are extinguished. 11 C.F.R. § 104.3(d).

16. The Corporate Respondents contend that they acted in good faith and reasonably relied on Advisory Opinion 1979-36 and believe that, because they charged CLPAC the "usual and normal charges" for their services and followed normal standards of industry practice, they did not make a contribution to the Committee.

Violation

V. 1. Without admitting or denying the Commission's conclusions, American Target Advertising, Inc., the Viguerie Company, and ConservativeHQ.com, Inc.:

a. will not contest the Commission's finding that they violated 2 U.S.C. § 441b(a);

b. will cease and desist from using "no-risk" contracts in future agreements with political committees as defined currently in the Act;

c. will cease and desist from using third-party, non-banking lenders to finance the cost of postage for mailings on behalf of political committees as defined currently in the Act; and

d. will pay to the Federal Election Commission an amount of Eighty-Seven Thousand, Five Hundred Dollars ($87,500).

2. Without admitting or denying the Commission's conclusions, Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer:

a. will not contest the Commission's finding that they violated 2 U.S.C. §§ 434(b), 441a(f), and 441b(a);

b. will cease and desist from using "no-risk" contracts in future agreements with vendors;

c. will cease and desist from using third-party, non-banking lenders to finance the costs of postage for mailings on their behalf; and

d. will pay to the Federal Election Commission an amount of Twelve Thousand, Five Hundred Dollars ($12,500).

VI. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437(g)(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission with good cause has reason to believe 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.

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

VIII. 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.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein and any "no-risk" contracts existing prior to the date of this agreement between Respondents and any political committees as defined by the Act. 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:

Lawrence H. Norton
General Counsel

BY: ______________________ 12/23/05
Rhonda J. Vosdingh Date
Associate General Counsel
For Enforcement

FOR THE RESPONDENT:

Richard A Viguerie
(Name) Richard A Viguerie
(Position) Chairman
American Target Advertising, Inc.
The Viguerie Company
ConservativeHQ.com, Inc.

Dec. 2, 2005
Date

FOR THE RESPONDENT:

Morton C. Blackwell
(Name) Morton C. Blackwell
(Position) President
Conservative Leadership Political
Action Committee

December 6, 2005
Date

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