



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 19 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jonathan D. Flowers

Silver Spring, MD 20906

RE: MUR 5666

Dear Mr. Flowers:

On May 24, 2006, the Federal Election Commission found that there is reason to believe you knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains 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.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

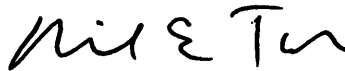
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily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

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 Lynn Tran, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Jonathan D. Flowers **MUR:** 5666

I. INTRODUCTION

This matter originated with a complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington and information ascertained by the Commission in the ordinary course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a). Based on the complaint and other information, there is reason to believe Jonathan D. Flowers violated the Federal Election Campaign Act of 1971, as amended (“the Act”) by permitting his name to be used for contributions made by MZM, Inc. (“MZM”) and Mitchell Wade and by consenting to prohibited corporate contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

MZM, a defense contractor based in Washington, D.C., is registered as a Nevada corporation. Mitchell Wade founded MZM in 1993 and served as president of MZM until June 2005 when he stepped down amid reports of a criminal investigation into MZM and Wade’s relationship with California Representative Randy “Duke” Cunningham.¹ *See* Renae Merle and R. Jeffrey Smith, *Agents Search Homes, Yacht of Contractor, Congressman*, Wash. Post, July 2, 2005, at A01. A private equity group, Veritas Capital, entered into an agreement to purchase

¹ On November 28, 2005, Representative Cunningham pled guilty to taking \$2.4 million in bribes to steer business to unnamed defense contractors. Although MZM is not named in Cunningham’s plea agreement, Justice Department officials have acknowledged that Mitchell Wade is one of the unnamed co-conspirators referred to in the plea agreement. *See* Onell R. Soto, *Bribe Probe Likely Will Snare Others, Experts Say*, San Diego Union-Tribune, Dec. 2, 2005. According to the Cunningham plea agreement, Wade bought Cunningham’s Del Mar, California home for \$1.675 million in 2003, sold it for a \$700,000 loss, and paid Cunningham more than \$1.1 million in bribes. *See id.*

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MZM on August 17, 2005. *See* Dean Calbreath, *Embattled MZM Sold to Investment Company*, San Diego Union-Tribune, Aug. 18, 2005.

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The allegations in the complaint, which does not identify any MZM officer or employee other than Mr. Wade, are based primarily on a newspaper article in which three unnamed former senior MZM employees stated that MZM and Mitchell Wade routinely forced employees to give political donations. Marcus Stern, *Contractor Who Bought Cunningham's House Made Employees Give Political Contributions*, San Diego Union-Tribune, June 20, 2005. The article quoted a senior former MZM employee as stating, "By the spring of '02, Mitch [Wade] was twisting employees' arms to donate to his MZM PAC. We were called in and told basically either donate to the MZM PAC or we would be fired." *Id.* The employees also reportedly stated that MZM paid employees substantially more than they could make elsewhere, making the contributions a cost of doing business, and that Wade reminded employees before their anniversary with MZM to give a designated amount to MZM PAC. *See id.* The specific amounts were based on seniority within the company and ranged from \$1,000 for senior officials to \$500 for less senior employees. One of the former MZM employees described a gathering in MZM's Washington D.C. offices where employees were told to write a check with the political recipient standing by. *See id.*

Despite earlier requests from the MZM Respondents for an extension of time to respond to the allegations detailed in the complaint, MZM, MZM PAC and Mitchell Wade subsequently indicated they would not submit any response to the complaint.

On February 24, 2006, Mitchell Wade entered a guilty plea to multiple felony counts, including paying over \$1 million in bribes to then-Representative Duke Cunningham, providing illegal benefits to Defense Department officials, and "attempting to curry favor with two other

members of Congress by making illegal campaign contributions.” Press Release, U.S.

Department of Justice, *Defense Contractor Mitchell Wade Pleads Guilty to Bribing former Congressman “Duke” Cunningham, Corrupting Department of Defense Officials, and Election Fraud* (Feb. 24, 2006). On the issue of illegal campaign contributions, Wade pled to one count of election fraud by unlawfully making campaign contributions in the name of another in violation of 2 U.S.C. §§ 441f and 437g(d)(1)(D). See Statement of Offenses, *United States v. Mitchell J. Wade* (D.D.C. Feb. 24, 2006)(Attachment 1).

The plea agreement details a scheme by Wade in effect from 2003 through 2005 to funnel \$78,000 in illegal campaign contributions to the campaigns of two members of the House of Representatives. See Statement of Offenses at 11-16. Although the two lawmakers are not named in the plea agreement, and instead are identified as Representatives A and B, a review of the disclosure reports along with press accounts indicate that Representative Virgil Goode is “Representative A” and Representative Katherine Harris is “Representative B.”² See John Bresnahan, “*Straw*” Donors Fueled Wade, Roll Call, Feb. 27, 2006.

The plea agreement states that Wade “devised and engaged in a scheme to knowingly and willfully violate the FECA by reimbursing MZM employees and their spouses for contributions to campaigns for the United States Congress, including to Representative A’s Campaign and Representative B’s Campaign.” Statement of Offenses at 12. Wade directed a total of \$46,000 in straw contributions to Representative Goode and an additional \$32,000 in straw contributions to Representative Harris. The Statement of Offenses states that “[a]t the time of the contributions listed in the Statement of Offenses, Wade knew that it was unlawful to make

² A spokesperson for Representative Katherine Harris has stated that Harris acknowledges being “Representative B” in the Wade plea agreement. See Charles R. Babcock, *Contractor Pleads Guilty to Corruption*, Wash. Post, Feb. 25, 2006, at A01.

contributions in the name of another person to a congressional campaign and that his actions were, therefore, unlawful.” *Id* at 15.

Wade targeted Representative Goode because MZM wanted to open a second facility in Representative Goode’s district and Wade thought Representative Goode could request appropriations funding for this facility and would advocate funding for MZM. *See* Statement of Offenses at 12. On March 26, 2003 and March 4, 2005, Wade met with MZM employees in his Washington, D.C. office and gave them cash or otherwise reimbursed the employees, and in some cases the employee’s spouse, for contributions to Representative Goode’s campaign. The employees used the money received from Wade to write checks to Representative Goode’s campaign and delivered the checks to Wade. Wade, in turn, handed the checks to Representative Goode. The plea agreement states that Wade did not inform Representative Goode or his staff “that the contributions were unlawful.” *Id*. The employees or their spouses made 19 straw contributions to Representative Goode using funds received from Wade. *See id* at 12-13.

Additionally, prior to March 4, 2005, Wade met with an MZM supervisor in his Washington, D.C. office and provided cash to the supervisor to fund contributions to Representative Goode’s campaign in the name of the supervisor, the supervisor’s wife and other MZM employees. The supervisor used the cash from Wade to make contributions to Representative Goode’s campaign in his own name, his wife’s name and reimbursed contributions made in the name of two other MZM employees. The supervisor delivered the four checks to Wade who handed them to Representative Goode. *See* Statement of Offenses at 13.

In addition to contributions to Representative Goode, the Wade plea agreement also describes \$32,000 in straw contributions to “Representative B,” who has since been identified as Rep. Katherine Harris. Wade purportedly targeted Representative Harris because MZM had a

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facility in her district, and Wade thought Rep. Harris could request appropriations funding that would benefit MZM and would be an advocate for MZM and its existing facilities. *See* Statement of Offenses at 14. In March 2004, Wade met with certain MZM employees and gave the employees cash or otherwise reimbursed them and, in some cases, their spouses, for contributions to Rep. Harris' campaign. The employees used the money received from Wade to write checks to Rep. Harris' campaign and delivered the checks to Wade. Wade, in turn, handed the checks to Representative Harris. The plea agreement states that Wade did not inform Representative Harris or her staff "that the contributions were unlawful." *Id.* The employees or their spouses made 16 straw contributions to Representative Harris using funds received from Wade. Statement of Offenses at 15.

The straw contributions detailed in the Wade plea agreement correspond to the following contributions by Jonathan D. Flowers:

Date of Contribution	Recipient Committee	Amount of Contribution
3/4/05	Goode for Congress	\$2,000
3/23/04	Friends of Katherine Harris	\$2,000
3/23/04	Friends of Katherine Harris	\$2,000

Jonathan D. Flowers served as Executive Vice-President for MZM. In addition to the contributions by Jonathan D. Flowers listed above, his wife, Jane T. Flowers, also made the following contributions corresponding to straw contributions detailed in the Wade plea agreement:

Date of Contribution	Recipient Committee	Amount of Contribution
3/4/05	Goode for Congress	\$2,000
3/23/04	Friends of Katherine Harris	\$2,000
3/23/04	Friends of Katherine Harris	\$2,000

B. Analysis

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. *See* 2 U.S.C. § 441f. It is also unlawful for an officer or director of a corporation to consent to any contribution or expenditure by the corporation that is prohibited by the Act. *See id.*

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An unrefuted allegation in the complaint is that MZM employees served as conduits for contributions to specific candidates supported by MZM and Mitchell Wade in violation of 2 U.S.C. § 441f. Wade's plea agreement described a scheme to influence two Members of Congress, believed to be Representatives Virgil Goode and Katherine Harris, by funneling contributions through MZM employees and their spouses. Wade made 39 different straw contributions through 19 different MZM employees or their spouses and personally handed the campaign contributions, in the form of personal checks from the MZM employees and their spouses, to the Representatives. The plea agreement states that Wade did not inform the Representatives "that the contributions were unlawful." Statement of Offenses at 12, 14. Indeed, it appears that Wade and the other participants in the scheme attempted to conceal the true source of the contributions.

The information provided in the Wade plea agreement supports a finding that there is reason to believe Jonathan D. Flowers violated 2 U.S.C. § 441f by serving as a conduit for contributions from Wade to Representatives Virgil Goode and Katherine Harris. Given the circumstances described in Wade plea agreement, detailing the straw contributions made by MZM employees and their spouses using funds provided by Mitchell Wade that correspond to contributions made by Jonathan D. Flowers, the Commission finds that there is reason to believe

that Jonathan D. Flowers knowingly and willfully violated 2 U.S.C. § 441f by permitting his name to be used for contributions made by MZM and Mitchell Wade.³

Furthermore, Jonathan D. Flowers was a high-level MZM official who made multiple conduit contributions and whose wife also made multiple conduit contributions. If Jonathan D. Flowers was aware of the fact that the reimbursements by Wade were made using MZM corporate funds when he agreed to be reimbursed, then he consented to the use of corporate funds in a reimbursement scheme. Accordingly, the Commission also finds that there is reason to believe that Jonathan D. Flowers knowingly and willfully violated 2 U.S.C. § 441b by consenting to prohibited corporate contributions.

³ To establish a knowing and willful violation, there must be knowledge that one is violating the law. *See FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *US v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15.