FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRAL: 06-01
DATE REFERRED: January 26, 2006
DATE ACTIVATED: April 13, 2006

STATUTE OF LIMITATIONS: October 24, 2007 –
June 20, 2008

SOURCE: AUDIT REFERRAL

RESPONDENTS: Democrat Republican Independent Voter Education – PAC of the International Brotherhood of Teamsters and C. Thomas Keegel, in his official capacity as treasurer

Amalgamated Bank

RELEVANT STATUTES AND REGULATIONS:
2 U.S.C. § 441b
2 U.S.C. § 434(b)
11 C.F.R. § 100.7(b)(11)
11 C.F.R. § 104.3(d)

INTERNAL REPORTS CHECKED: Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter was generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of the Democrat Republican Independent Voter Education – PAC of the International Brotherhood of Teamsters ("DRIVE" or "the Committee") covering the period January 1, 2001 through December 31, 2002. The Commission approved the Report of the Audit Division on DRIVE on July 5, 2005, and on January 26, 2006, one finding was referred to the Office of the General Counsel for enforcement. Attachment 1, Final Audit Report ("FAR"), June 16, 2005. The finding relates to two bank loans totaling $500,000 from Amalgamated Bank to DRIVE during the 2002 election

cycle that do not appear to be made in the ordinary course of business or on a basis that assures repayment.[1] 2 U.S.C. § 441b. The finding also noted various reporting violations in connection with the bank loans. Attachment 1; 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(d). The relevant Schedule C (Loan Information) and C-1s (Loans and Lines of Credit) report that the bank loans were secured with Accounts Receivable and/or Certificates of Deposit. Attachment 1. However, the facts uncovered during the audit revealed that neither bank loan was secured. *See* discussion *infra* at Section II.A. In addition, DRIVE failed to properly disclose the bank loans as outstanding on the Committee's 2002 Year End Report, and it was not until 2005 that DRIVE amended the 2003 reports to show the bank loans as outstanding until paid and to show the payments. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(d). Based on the information set forth in the FAR, we recommend that the Commission make reason to believe findings as follows:

- DRIVE and C. Thomas Keegel, in his official capacity as treasurer accepted prohibited contributions from Amalgamated Bank in the total amount of $500,000 in violation of 2 U.S.C. § 441b. Attachment 1.

- Amalgamated Bank made prohibited contributions to DRIVE in the total amount of $500,000 in violation of the 2 U.S.C. § 441b.[2] Attachment 1.

- DRIVE and C. Thomas Keegel, in his official capacity as treasurer failed to accurately describe the collateral for the bank loans owed by the Committee and to properly report the bank loans as outstanding on disclosure reports filed with the Commission in violation of 2 U.S.C. § 434(b).

[1] All of the facts recounted in this Report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, all citations to the Federal Election Campaign Act of 1971, as amended ("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.

[2] Amalgamated Bank falls under the purview of 2 U.S.C. § 441b(a), because it is a state chartered bank incorporated under the laws of the State of New York and its deposits are regulated by the Federal Deposit Insurance Corporation. *See* 11 C.F.R. § 100.7(b)(11).

II. DISCUSSION OF INVESTIGATION

We recommend that the Commission authorize the use of compulsory process to investigate the facts and circumstances surrounding the actions on the part of DRIVE and Amalgamated Bank in connection with the bank loans, We plan to use informal methods of investigation, using compulsory process authority, if granted, only if necessary.

It appears that there was a discrepancy between the loan documentation and disclosure reports which both indicate that the loans were secured, and the information uncovered during the audit indicating that the loans were not secured. However, the circumstances surrounding this discrepancy are unclear. In particular, it is unknown if the discrepancy is the result of mistakes or knowing and willful actions, and we believe it would be prudent to conduct some investigation.[3]

Two separate promissory notes, executed one week apart by DRIVE, inaccurately set forth that the loans were secured with all of the following traditional collateral: accounts receivable, general intangibles, bank deposits or certificate of deposits. Attachment 5. A letter from Amalgamated Bank to DRIVE (a copy of which was later submitted by DRIVE to the Commission in response to the Interim Audit Report) also indicated that DRIVE's accounts receivable, general intangibles and cash secured both loans. Attachment 6. In discussions with the Audit Division staff we have learned that it is highly unusual for a bank to create documents that inaccurately reflect the collateral for a loan, and reliance on these documents would give a reviewer or auditor a

[3] Actions that are "knowing and willful" are those that were "taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); *see also FEC v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D.N.J. 1986)(distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207 (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.*

false impression of the security underlying these loans. However, the Audit Division staff asked to see the underlying documents, whereupon a DRIVE representative acknowledged that the collateral did not exist, with the exception of bank deposits, which were not restricted. Attachment 7.

Moreover, any security derived from the bank account appears to be illusory. According to the Deposit Account Pledge Agreement executed by DRIVE, a "block" was to be placed on the pledged deposits in DRIVE's money market account at Amalgamated Bank. Attachment 8. So long as any of DRIVE's liabilities remained unpaid, the pledged portion of the account was to be "blocked," e.g., held in that account and DRIVE was to be prohibited from withdrawing those pledged funds.[4] *Id.* Both Drive and Amalgamated Bank asserted that the total loan amount did not exceed the amount of pledge funds and that the amount of money in DRIVE's money market account at Amalgamated Bank always exceeded the amount of the loans. Attachments 1 and 6. However, the Audit Division's review of the bank statements indicate that the money market account balance fell below the $500,000 loan principal on November 18, 2002 ($495,228) and remained under that amount through December 4, 2002 ($399,593). Attachment 1. This information indicates that there were no holds or restrictions in place on the money market account, despite the pledge agreement. Attachments 1, 6, and 8. Without the restrictions in place and

---

[4] Deposit Account Pledge Agreement – General Terms and Conditions -- 2(b) Blocked Account:

> So long as any of the Liabilities shall remain unpaid: (i) the Deposit shall be kept in a separate blocked Account or Accounts or, if the Deposit is a portion of an Account, the pledge portion of the Account shall be blocked and held in that Account, at the Branch of the Bank identified above, in Specific Terms, under the sole dominion and control of the Bank, (ii) Except as otherwise provided herein, Pledgor shall have no right to withdraw any amounts from the Deposit, (iii) any interest or other income accrued on the Deposit shall be payable to Pledgor when credited to the Account but shall not be retained as Collateral, and (iv) the Bank may from time to time exercise all rights of Pledgor with respect to the Collateral, as necessary or desirable in the Bank's sole judgment to protect the Bank's interests. Unless an Event of Default occurs and is continuing, the Bank agrees to remit amounts deposited in the Account to the Borrower General Account in accordance with the terms specified in the Covenant Agreement, dated as of the date hereof, between the Borrower and the Bank.

See Attachment 8.

without the collateral listed in the loan documentation, the bank loans from Amalgamated Bank to DRIVE were not, in fact, secured.

III. RECOMMENDATIONS

1. Open a MUR in AR 06-01.

2. Find reason to believe that Democrat Republican Independent Voter Education – PAC for the International Brotherhood of Teamsters and C. Thomas Keegel, in his official capacity as treasurer violated 2 U.S.C. §§ 441b and 434(b).

3. Find reason to believe that Amalgamated Bank violated 2 U.S.C. § 441b.

4. Approve as Factual and Legal Analyses the Report of the Audit Division on Democrat Republican Independent Voter Education – PAC for the International Brotherhood of Teamsters dated June 16, 2005.

5.

6.

7.

8. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

6/2/06
Date

BY: Sidney Rocke
Assistant General Counsel

Christine C. Gallagher
Attorney

Attachments
1. Report of the Audit Division on DRIVE, June 16, 2005

Finding 1. Apparent Prohibited Contributions – Bank Loans

Summary

DRIVE reported receiving two loans totaling $500,000 from Amalgamated Bank (the Bank). Each loan was reported on Schedule C. Schedule C-1 indicated that each loan was secured and described the collateral as accounts receivable. However, it does not appear that either loan is secured. The Audit staff recommended that DRIVE demonstrate that the loans were secured; made in the ordinary course of business; and, not a prohibited contribution or file amended reports disclosing each loan as unsecured. However, DRIVE did neither.

Legal Standard

Loans Excluded from the Definition of Contribution. A loan of money to a political committee by a State bank, a federally chartered depository institution (including national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business.

A loan will be deemed to be made in the ordinary course of business if it bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument and is subject to a due date or amortization schedule. 11 CFR §100.7(b)(11)

Assurance of Repayment. Commission regulations state a loan is considered made on a basis which assures repayment if the lending institution making the loan has:

- Perfected a security interest in collateral owned by the political committee receiving the loan.
- Obtained a written agreement whereby the political committee receiving the loan has pledged future receipts, such as public financing payments.
- If these requirements are not met, the Commission will consider the totality of circumstances on a case by case basis in determining whether the loan was made on a basis which assured repayment. 11 CFR §100.7(b)(11)(i) (A) and (B)

When pledged future receipts are used to assure repayment by a committee that does not receive Presidential Matching Funds, the relevant requirements are that:

- The amount of the loan does not exceed the pledged funds.
- Loan amounts are based on reasonable expectations that the pledged funds will be received. The committee must furnish the lending institution documentation such as cash flow charts or other financial plans that reasonably establish that such funds will be available.
- A separate account is established at the lending institution, or the lender is given an assignment that permits the lender access to an account at another institution, and the

pledged funds are required to be deposited into the separate account for the purpose of retiring the debt. 11 CFR §100.7(b)(11)(i)(B)

Facts and Analysis

DRIVE received two loans from the Amalgamated Bank. The first loan in the amount of $300,000 was received on October 29, 2002. The second loan in the amount of $200,000 was received on November 1, 2002. DRIVE reported each loan on Schedules C (Loan Information) and C-1 (Loans and Lines of Credit). Schedule C-1 indicated that the $300,000 loan was secures by future receipts described as Accounts Receivable and the $200,000 was reportedly collateralized by Accounts Receivable and Certificates of Deposit.

Each loan was supported by a revolving promissory note, continuing security agreement, and a covenant agreement. These documents were signed by DRIVE's Chairman and Treasurer.[1] The revolving promissory note listed collateral as accounts receivable, bank deposits, certificates of deposit, and general intangibles. The covenant agreement required DRIVE to provide the Bank with a reasonable estimate of revenue for a six month period, unaudited quarterly financial statements, a year end balance sheet, and a statement of income and retained earnings.

Although the loan documents appear to demonstrate that each loan was secured, in fact, neither loan was secured by collateral. For example, DRIVE did not maintain any certificates of deposit and even though DRIVE maintained its checking accounts at the Bank, it appears that there were no holds or restrictions on the use of funds from those accounts. There were no documented outstanding accounts receivable and neither Bank document described the make up of "general intangibles." Further, there was no evidence made available that DRIVE provided the Bank with any of the financial statements or revenue estimates required by the covenant agreement; nor was there any evidence that the Bank made any attempts to obtain such information. Therefore, the Audit staff concluded that the loans were not made on a basis that assures repayment.

Finally, it should be noted that DRIVE did not properly disclose the loans as outstanding on it Year-End 2002 disclosure report. Each loan was paid off in calendar year 2003. It was not until 2005 that DRIVE amended its 2003 reports to show the loans as outstanding until paid and to show the payments.

This matter was discussed during fieldwork and at the exit conference. The DRIVE representative acknowledged that the collateral did not exist, with the exception of bank deposits, which were not restricted. He further indicated that the Bank is a "labor bank" that is privately owned and is willing to extend credit to unions and their political action committees.

Interim Audit Report Recommendation

The Audit staff recommended that DRIVE provide evidence demonstrating that the loans were secured; were made in the ordinary course of business; and, why each loan should

[1] Our copies of the documents are not signed by a bank representative.

not be considered a prohibited contribution from the bank. Absent such a demonstration, DRIVE should have filed amended reports to correctly disclose each loan as unsecured.

Committee's Response to Recommendations and the Audit Staff's Assessment

In response, DRIVE representatives stated:

> "the loans were made in accordance with applicable banking laws and regulation, under the ordinary course of business, and on a basis which assures repayment meaning that: 1) Prior to approving the loan, DRIVE provided Amalgamated Bank with financial documents demonstrating the amount of future membership contributions on a monthly basis and that the contributions would be available as security for the loans. After reviewing these documents, DRIVE's credit history as well as other standard loan criteria, Amalgamated Bank made the loan at the usual and customary interest rate for the category of loan involved and in a manner fully compliant with federal regulations. 2) As required by federal regulations, Amalgamated Bank required repayment of the loans. Amalgamated Bank was assured that it would be repaid through a written instrument. And, these loans were secured by DRIVE's monthly membership contributions which were deposited in a savings account with Amalgamated Bank. This account served as collateral for the loans which is typical of the type of collateral offered by political committees. **In addition, it is important to note that the total loan amount did not exceed the amount of pledged funds and in fact, the amount of money in DRIVE's account at Amalgamated Bank always exceeded the amount of the loans** (emphasis added)."

DRIVE also provided a copy of a "Deposit Account Pledge Agreement" applicable to DRIVE's money market account which held the pledged deposits. According to the agreement under section 2 (b) Blocked Account, "so long as any of the Liabilities shall remain unpaid: (i) the Deposit shall be kept in a separate blocked Account or Accounts or, if the Deposit is a portion of a Account, the pledged portion of the Account shall be blocked and held in that account." Deposit is defined as funds in the Account.

According to a letter from the Bank, DRIVE's accounts receivable, general intangibles and cash secured both loans. The Bank also maintains that DRIVE's account balance always exceeded the outstanding loan balance and the cash on deposit was sufficient to act as full collateral for the loan.

Both DRIVE and the Bank asserted that the total loan amount did not exceed the amount of pledged funds and in fact, the amount of money in DRIVE's account at Amalgamated Bank always exceeded the amount of the loans. However, the bank statements indicate that the balance fell below the $500,000 loan principal on November 18, 2002,

($495,228) and remained under that amount through December 4, 2002 ($399,593)[2]. It is therefore clear that any block that may have been attached to the account was not equal to the loan amount.

DRIVE also states that revenue projections were provided to the Bank prior to obtaining the loan to provide assurance of repayment. As noted in the Legal Standards above, if future receipts are used to provide assurance of repayment for a loan, specific requirements must be met. The documentation provided to date fails to demonstrate that those requirements have been met.

It is the opinion of the Audit staff that DRIVE has not demonstrated that the loans were made on a basis that assures repayment and not contributions by the Bank.

[2] In addition, there were significant amounts of outstanding checks that had been written on the DRIVE's zero balance operating account which was funded by the same money market account that holds the pledged deposits. Those amounts are not reflected in the bank statement balances. Thus how far below the loan principal amount the account balance went was, in part, dependent on how quickly payees negotiated their checks. For example, as of October 31, 2002, the zero balance operating account had $644,489 in outstanding checks while the money market account had a balance of $811,672 (loan balance was $300,000).