



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Norman Hsu
Inmate Register # 60590-054
MCC New York
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

DEC 22 2009

Re: MUR 6233 (Formerly Pre-MUR 487)

Dear Mr. Hsu:

On August 18, 2009, the Federal Election Commission (the "Commission") notified you that the Commission had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

Upon further review of the available information and information provided by you in your response, the Commission, on November 17, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Norman Hsu **MUR: 6233**

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6 **I. INTRODUCTION**

7 This matter originated with information ascertained by the Federal Election
8 Commission ("the Commission") in the normal course of carrying out its supervisory
9 responsibilities. See 2 U.S.C. § 437g(a)(2). On May 19, 2009, Norman Hsu
10 ("Respondent") was found guilty of four counts of knowingly and willfully violating the
11 Federal Election Campaign Act of 1971, as amended, ("the Act") by making
12 contributions in the names of others totaling almost \$140,000 to various political
13 committees. 2 U.S.C. § 441f. Hsu previously pled guilty to five counts of mail fraud and
14 five counts of wire fraud related to a fraudulent investment scheme. On September 29,
15 2009, Hsu was sentenced to more than 24 years in prison for all charges.

16 Had the Commission simply declined to open a matter under review, there would
17 be no public record of its analysis and conclusions regarding these violations. In the
18 interests of transparency and providing guidance, the Commission opened a matter under
19 review, but dismissed the matter on the grounds of prosecutorial discretion and closed the
20 file.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 **A. Background**

23 On May 7, 2009, Norman Hsu pled guilty to five counts of mail fraud and five
24 counts of wire fraud stemming from his role in an investment fraud scheme that

1 defrauded numerous investors. Department of Justice, United States Attorney, Southern
2 District of NY Press Release, *Norman Hsu Pleads Guilty to Investment Fraud*, May 7,
3 2009. Hsu was the managing director of two companies – Components, Ltd. and Next
4 Components, Ltd. – which claimed to provide investment programs that extended short-
5 term financing to businesses. *Id.* Hsu recruited victims by promising guaranteed short-
6 term high returns on their investments. *Id.* In reality, the companies were vehicles for
7 Hsu's "Ponzi" scheme, and money returned to earlier investors was paid with money
8 received from subsequent investors. *Id.* From 2000 through August 2007, Hsu
9 convinced his victims to invest at least \$60 million in his fraudulent scheme and
10 defrauded his victims out of at least \$20 million. *Id.* Hsu was sentenced to 240 months
11 in prison for his convictions for mail and wire fraud.

12 In addition to pleading guilty to counts of mail and wire fraud, Hsu was tried and
13 convicted of violating 2 U.S.C. § 441f by making contributions to various Federal
14 political committees in the names of others. Department of Justice, United States
15 Attorney, Southern District of NY, Press Release, *Norman Hsu Found Guilty of Violating*
16 *the Federal Election Campaign Act*, May 19, 2009. Specifically, in 2004, Hsu asked
17 individuals to make contributions to Federal campaign committees totaling more than
18 \$6,000; in 2005, more than \$38,000; in 2006, more than \$50,000; and in 2007, more than
19 \$43,000. Transcript of Criminal Trial, 07 Cr. 1066(VM), (May 12, 2009). Hsu then
20 reimbursed the individuals for the contributions. Evidence from Hsu's criminal trial
21 indicated that Hsu made direct and implied threats to the conduits, leading them to
22 believe that if they did not make these contributions, their ongoing investment

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1 relationship with Hsu would be adversely affected.¹ *Id.* In all of the instances where Hsu
2 requested that the conduits contribute to political committees, Hsu specifically named
3 which candidates would receive the contributions. *Id.* In all, Hsu utilized five conduits
4 to contribute almost \$140,000 to various candidate committees. *Id.* Each of the conduits
5 cooperated with the Department of Justice (“DOJ”) in the criminal investigation and
6 prosecution in exchange for immunity from criminal prosecution. *Id.* On May 19, 2009,
7 a jury found Hsu guilty of violating 2 U.S.C. § 441f by making contributions to political
8 committees in the names of others. Press Release, May 19, 2009. Hsu was sentenced to
9 52 months in prison for his campaign finance violations, to be served consecutively to his
10 240 month sentence for his other violations. Department of Justice, United States
11 Attorney, Southern District of NY, Press Release, *Former Political Fundraiser Norman*
12 *Hsu Sentenced*, September 29, 2009.

13 On August 18, 2009, the Commission sent a notification letter to Hsu advising
14 him of the Commission’s intention to consider whether to initiate enforcement action in
15 relation to his violations of the Act. On September 1, 2009, the Commission received a
16 letter from Hsu in which he acknowledged that he was convicted of “campaign
17 contribution violation[s]” in a criminal trial and was awaiting sentencing. He claimed
18 that he is indigent and requested that the Commission provide counsel to assist in

¹ It appears that in an effort to raise his public profile and thereby convince more victims to invest in his fraudulent scheme, Hsu also pressured his “Ponzi” scheme victims to individually make unreimbursed contributions to various Federal candidates. Department of Justice, United States Attorney, Southern District of NY, Press Release, *Manhattan U.S. Attorney Indicts Norman Hsu for Massive Fraud Scheme*, December 4, 2007.

1 responding to the Commission's notification. At this time, we have not received any
2 additional response from Hsu.²

3 **B. Contributions in the Name of Another**

4 The Act prohibits any person from making or accepting a contribution in the
5 name of another person. *See* 2 U.S.C. § 441f. Likewise, persons are prohibited from
6 knowingly permitting their names to be used to effect contributions made in the name of
7 another person and from knowingly assisting in making such contributions. *See id.*;
8 11 C.F.R. § 110.4(b)(1)(iii).

9 Evidence from Hsu's criminal trial indicates that Hsu, after reaching his own
10 contribution limits for specific candidates, utilized conduits to make additional
11 contributions to Federal candidates and committees totaling almost \$140,000. Trial
12 Transcript. The conduits in this matter testified at Hsu's criminal trial that Hsu
13 reimbursed them for the contributions, in violation of 2 U.S.C. § 441f. *Id.*

14 Moreover, it appears that Hsu's conduct may have been knowing and willful. The
15 knowing and willful standard requires knowledge that one is violating the law. *See*
16 *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp.
17 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof
18 that the defendant acted deliberately and with knowledge that the representation was
19 false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a
20 knowing and willful act may be drawn "from the defendant's elaborate scheme for
21 disguising" his or her actions. *Id.* at 214-215.

² Hsu also requested an extension of time to file additional materials in response to the notification until after he was sentenced. Given that the Commission has determined that it is appropriate to dismiss this matter, an additional response from Hsu is not necessary.

1 In this matter, testimony from the criminal trial established that Hsu had
2 knowledge of individual campaign contribution limitations, and on more than one
3 occasion, he discussed these limits with both reimbursed and unreimbursed contributors.
4 Trial Transcript at 67. For example, an investor testified at trial that Hsu asked him to
5 make a contribution to a campaign because Hsu himself had reached his contribution
6 limit. *Id.* at 452-456. The witness also testified that Hsu acknowledged to him that
7 reimbursed contributions are illegal, but indicated that the witness would be able to
8 continue his investments with Hsu if he contributed to certain political committees. *Id.*
9 In another instance, Hsu convinced one of the conduits to give him access to her credit
10 card in order to make contributions. *Id.* at 179. Finally, the mere fact that Hsu sought out
11 conduits through the use of coercion to make what would have been excessive
12 contributions suggests that his actions were knowing and willful. *See, e.g.,* MUR 5666
13 (MZM, Inc.) (the Commission found reason to believe that respondents knowingly and
14 willfully reimbursed employees for contributions); *see also* MUR 5389 (Jose Casal) (the
15 Commission found reason to believe the actions of a foreign national who sought out
16 conduits to make prohibited contributions were knowing and willful).

17 In addition to potential liability for knowingly and willfully making contributions
18 in the name of another, Hsu's companies, and Hsu as an officer, may have violated the
19 Act's prohibitions on corporate contributions or, alternatively, violated the Act's
20 contribution limitations. *See* 2 U.S.C. §§ 441a and 441b(a). It appears that Hsu
21 reimbursed at least some of the contributors from company accounts. In fact, one of the
22 conduit donors testified that in some instances, Hsu would reimburse the contributions
23 with the same check that he used to pay profits on the investments. Trial Transcript at

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1 198 and 453. However, the companies were organized and managed by Hsu strictly as
2 fronts for the “Ponzi” scheme. *Id.* After the collapse of the scheme and the resulting
3 criminal charges, the companies are defunct. *Id.* The Commission therefore made no
4 findings regarding corporate or excessive contributions as to the companies, nor did the
5 Commission determine it was a prudent use of resources to pursue Hsu, the only officer
6 of the companies, for potential violations of the Act in his capacity as officer.

7 Despite clear evidence that Hsu knowingly and willfully violated the Act, for the
8 following reasons, the Commission dismisses MUR 6233 as a matter of prosecutorial
9 discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985). First, it appears that Hsu is
10 indigent and would be unable to pay a civil penalty related to his violations. After Hsu
11 was indicted for mail and wire fraud, DOJ sought forfeiture of all property obtained as a
12 result of his offenses. Second, several victims of the “Ponzi” scheme have obtained civil
13 judgments against Hsu. Finally, Hsu has been sentenced to more than 24 years in prison
14 for his crimes, including four years for the campaign finance violations. Therefore, the
15 Commission opened a matter under review, but exercised its prosecutorial discretion to
16 dismiss this matter.

17 **C. Conduits**

18 The five conduits who testified at Hsu’s criminal trial have not been named as
19 Respondents in this matter for knowingly permitting their names to be used to effect the
20 contributions in this matter. *See* 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(iii). The
21 Commission has in the past found reason to believe that conduits violated the Act by
22 permitting their names to be used to effect contributions made in the name of another
23 where they were actively involved in the reimbursement schemes, coerced or encouraged

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1 others to participate in such schemes, or were public officials. *See, e.g.,* MUR 5366
2 (O'Donnell); MUR 5666 (MZM, Inc.); and MUR 5818 (Fieger). However, in a recent
3 matter, the Commission has taken no further action against conduits after opening an
4 investigation when those conduits were subordinate employees or spouses. *See* MUR
5 5871 (Noe). In this matter, each of the conduits was a victim in Hsu's investment
6 scheme. Available information also indicates that the conduit investors were pressured
7 by Hsu into participating in the reimbursement scheme. Trial Transcript. Finally, the
8 conduits cooperated with DOJ and participated in the prosecution of Hsu for his
9 violations of the Act.

10 In light of this information, and because the Commission took no action as to Hsu,
11 the central figure in the reimbursement scheme, the Commission determined that it was
12 not a prudent use of resources to proceed as to the conduits, known or unknown.

13 **III. CONCLUSION**

14 Based on the foregoing reasons, the Commission opened a matter under review,
15 dismisses MUR 6233 as a matter of prosecutorial discretion and closes the file. *See*
16 *Heckler v. Chaney*, 470 U.S. 821 (1985).

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