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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
MUR 6460) DISMISSAL AND CASE
FRIENDS OF JIM BENDER/BENDER FOR) CLOSURE UNDER THE
SENATE AND FRANK MANCL,) ENFORCEMENT PRIORITY
AS TREASURER) SYSTEM
JAMES C. BENDER)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases, or in certain cases where there are no facts to support the allegations, to make no reason to believe findings. The Office of General Counsel has scored MUR 6460 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, this Office recommends that the Commission make no reason to believe findings in MUR 6460.

In this matter, the complainant states that candidate James C. Bender¹ and his campaign committee, Friends of Jim Bender/Bender for Senate and Frank Mancl, in his official capacity as

¹ Mr. Bender was an unsuccessful 2010 primary election candidate for the United States Senate from New Hampshire.

1 treasurer ("Committee") (collectively, "respondents") may have accepted an illegal contribution
2 when it allegedly failed to pay Swiftcurrent Strategies ("Swiftcurrent"), a Massachusetts limited
3 liability company ("LLC"), \$25,665.60 for two telephone town halls held on September 12, 2010
4 and September 13, 2010, just before the September 14, 2010 primary election.² The complainant
5 does not specify why he believes that the respondents might have accepted an illegal
6 contribution, other than stating that they might "be considering the uncollected debt" to be "a
7 campaign contribution" which, he asserts, could "be construed as an illegal campaign
8 contribution and in violation of 11 C.F.R. part 110."

9 Given Swiftcurrent's status as an LLC, if it has elected to be treated as a corporation for
10 federal tax purposes then, pursuant to 11 C.F.R. § 110.1(g)(3), any federal contributions that it
11 might make would constitute illegal corporate contributions and, as such, would be prohibited
12 under 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.9 and 114.2.³ Alternatively, if Swiftcurrent had
13 elected partnership status for federal tax purposes, and assuming that the \$25,665.60 at issue
14 constituted a "contribution" from Swiftcurrent, it would be apportioned among the company's
15 members, who may number no more than 5, *see n. 2*.

16 In their response, the respondents maintain that Swiftcurrent did not fully provide the
17 services it promised and that, therefore, they have treated the \$25,665.60 at issue as a disputed
18 debt. Accordingly, the response states that the Committee has not paid the bill, and the parties

² Although the complaint does not state whether Swiftcurrent is a sole proprietorship or multi-member LLC, according to its website, <http://beswiftstayscurrent.com/who-we-are/pete-fullerton/>, Swiftcurrent appears to have up to 5 members—Pete Fullerton, Michael Fullerton, Rob Willington, Ryan Boehm, and Tim Bonin.

³ In general, multi-member limited liability companies may elect to be treated either as partnerships or as corporations for federal tax purposes, regardless of their status under state law. *See Explanation and Justification for 11 C.F.R. 110.1(g): Treatment of Limited Liability Companies Under the Federal Election Campaign Act*, 64 Fed. Reg. 37397, 37399 (July 12, 1999).

1 are now involved in civil lawsuit to resolve the dispute. Under these circumstances, the
2 respondents maintain that the debt does not constitute a contribution.

3 Under 11 C.F.R. § 116.1(d), "disputed debt means an actual or potential debt or
4 obligation owed by a political committee, including an obligation arising from a written contract,
5 promise or agreement to make an expenditure, where there is a bona fide disagreement between
6 the creditor and the political committee as to the existence or amount of the obligation owed by
7 the political committee." Furthermore, "a political committee shall report a disputed debt in
8 accordance with 11 C.F.R. 104.3(d) and 104.11 if the creditor has provided something of value
9 to the political committee" and "until the dispute is resolved, the political committee shall
10 disclose on the appropriate reports any amounts paid to the creditor, any amount the political
11 committee admits it owes, and the amount the creditor claims is owed." 11 C.F.R. § 116.10(a).

12 A review of the Committee's filings reveals that it filed amendments to its 2010 October
13 Report and Year-End Report on April 26, 2011, both of which disclose a disputed debt in the
14 amount of \$22,334 owed to Swiftcurrent. These amended reports were filed after the
15 respondents received notice of the complaint in this matter. Subsequent to the parties' complaint
16 and response, both submitted a signed "Stipulation of Dismissal with Prejudice," which was filed
17 in Massachusetts State Court on May 16, 2011, stipulating that the parties had settled on a
18 payment of \$11,167.25 as respondents' payment to Swiftcurrent, and jointly requesting that this
19 matter be dismissed with prejudice.

20 As noted above, the Act prohibits contributions to a candidate or an authorized committee
21 in excess of \$2,400 in connection with Federal elections, and it prohibits corporations from
22 making contributions in connection with any Federal election. See 2 U.S.C. §§ 441a(a)(1)(A)
23 and (f), and 441b(a). Similarly, the Act prohibits political committees from knowingly accepting

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1 excessive or corporate contributions. 2 U.S.C. §§ 441a(f) and 441b(a). Under the facts
2 presented here, the Committee could have accepted an illegal contribution, as alleged in the
3 complaint, by accepting an extension of credit from a commercial vendor outside the ordinary
4 course of business on terms not substantially similar to extensions of credit to nonpolitical
5 debtors of similar risk and size of obligation, or by accepting goods or services from a vendor at
6 less than the normal and usual charge. 11 C.F.R. §§ 100.52(d)(1), 100.55, and 116.3.

7 The available information indicates that the cost of the services provided by Swiftcurrent
8 were a disputed debt, which was untimely reported by the Committee after the complaint in this
9 matter was filed. The amended reports filed by the Committee in April 2011 reflect the disputed
10 debt, and therefore did not constitute a prohibited or excessive contribution to the Committee.

11 This Office therefore recommends that the Commission find no reason to believe that James C.
12 Bender violated the Act or that Friends of Jim Bender/Bender for Senate and Frank Mancl, in his
13 official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b(a) by accepting an excessive
14 or prohibited corporate contribution. Despite the foregoing conclusion, Friends of Jim
15 Bender/Bender for Senate and Frank Mancl, in his official capacity as treasurer, did not report its
16 disputed debt in a timely fashion, in violation of 2 U.S.C. § 434(b) and 11 C.F.R. § 116.10(a).
17 However, in light of the April 2011 amendments to the 2010 October Quarterly Report and the
18 2010 Year-End Report and in furtherance of the Commission's priorities as discussed above, the
19 Office of General Counsel believes the Commission should exercise its prosecutorial discretion
20 and dismiss this violation. *See Heckler v. Chaney*, 470 U.S. 821 (1985). In addition, this Office
21 recommends that the Commission find no reason to believe that Swiftcurrent violated 2 U.S.C.
22 §§ 441a (a)(1)(A) or 441b(a) by making an excessive or prohibited corporate contribution.

RECOMMENDATIONS


1. Approve the General Counsel's Report with edits as previously circulated.
2. Find no reason to believe that Friends of Jim Bender/Bender for Senate and Frank Mancl, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b(a), or underlying regulations.
2. Find no reason to believe that James Bender violated the Federal Election Campaign Act of 1971, as amended, or underlying regulations.
4. Find no reason to believe that Swiftcurrent Strategies violated 2 U.S.C. §§ 441a(a)(1)(A) or 441b(a), or underlying regulations.
5. Dismiss the allegations that Friends of Jim Bender/Bender for Senate, and Frank Mancl, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 116.10(a).
6. Close the file and approve the appropriate letters.

Christopher Hughey
Acting General Counsel


Christopher Hughey
Acting General Counsel

1/22/11
Date

BY:



Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration



Jin Lee
Attorney

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