



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7135
Donald J. Trump for President Inc., *et al.*)

**STATEMENT OF REASONS OF CHAIR CAROLINE C. HUNTER AND
COMMISSIONER MATTHEW S. PETERSEN**

The Complaint in this matter claimed that Paul Manafort — as an agent of both Donald Trump and Donald J. Trump for President, Inc., and Timothy Jost, in his official capacity as treasurer (collectively, the “Respondents”) — solicited a six million dollar contribution from Sheldon Adelson to the Super PAC Rebuilding America Now (the “PAC”). The Commission’s Office of General Counsel (“OGC”) correctly concluded that Manafort did not. Nonetheless, OGC recommended that the Commission find reason to believe that Manafort made a solicitation “generally” to the PAC on a July 20, 2016 conference call, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”) and proposed an investigation.¹

The sole support for OGC’s reason to believe recommendation is a single statement made to reporters by a third party purporting to describe Manafort’s comments during the call. In fact, there is no specific information in the record revealing what Manafort actually said: there is only a rough portrayal of the general nature of his address. Nevertheless, OGC recommended finding reason to believe a violation of the Act occurred, weighing the fact that Respondents did not supply an alternate quote as evidence of guilt, and supposing that participants on the call *could* have interpreted his words as a solicitation *if* they resembled the statement found in the Complaint. Consistent with past actions involving speculative complaints lacking specific evidence of wrongdoing, OGC’s recommendation and the Commission’s vote in this matter should have been in favor of dismissal. We voted accordingly.²

¹ OGC recommended that the Commission find reason to believe that Paul Manafort and the Trump campaign violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R § 300.61 with respect to the July 20th conference call. OGC also recommended taking no action at this time as to Donald J. Trump personally. *See* MUR 7135 (Donald J. Trump for President Inc., *et al.*), First Gen. Counsel’s Rpt. at 10 (“FGCR”).

² MUR 7135 (Donald J. Trump for President Inc., *et al.*), Certification at ¶2 (July 31, 2018).

I. BACKGROUND

During a July 15, 2016 appearance on “Fox and Friends,” Paul Manafort³ was asked, “[i]s it true that Sheldon Adelson has been asked to shell out a six million dollar check for all the corporate sponsors [that] bailed out of the RNC?”⁴ In reply, Manafort said, “I have no idea. I’m not the RNC. I’d like to have him bail out — write a check for the Trump campaign for that amount of money, if he could.”⁵ On July 20, 2016, Manafort participated by telephone in a meeting held by the PAC. In a lengthy interview later given to reporters, Alex Castellanos, a strategist hired by the PAC, characterized Manafort as having “called in [to the meeting], gave our contributors a briefing on the state of the campaign and let folks know that there’s no better way to help elect Donald Trump than to support [the PAC].”⁶

The Complaint, however, incorrectly attributes Castellanos’ statement to Manafort⁷ and claims that Manafort’s July 15th statement — when linked with the misattributed July 20th statement — constituted an excessive solicitation by Manafort of a six-million dollar contribution from Sheldon Adelson to the PAC.⁸ Relying on information in the record showing that Manafort’s July 15th statement was made in jest, and consistent with the Commission’s previous action in MUR 6939 (Mike Huckabee, *et al.*), OGC concluded that Manafort’s statement was not a solicitation.⁹ We agree that Manafort did not solicit Sheldon Adelson on July 15, 2016.

³ Paul Manafort served as Campaign Chairman of the Trump presidential campaign and was acting in that capacity at the time the events at issue in this matter took place. *See* Resp. at 1 (Dec. 19, 2016). Manafort was subsequently convicted of charges unrelated to allegations in the Complaint, including tax fraud, bank fraud, and failure to disclose a foreign bank account. *See United States v. Paul J. Manafort, Jr., and Richard W. Gates III*, 1:18-cr-83 (E.D. Va. Aug. 21, 2018).

⁴ Compl. at 2 (Sept. 14, 2016) (citing *Is Trump Rethinking his VP Pick after Attack in Nice?*, Fox and Friends (July 15, 2016), available at <http://video.foxnews.com/v/5036949908001/?#sp=show-clips>)).

⁵ Compl. at 2.

⁶ *Id.* Presumably Castellanos had a strong self-interest in promoting to the public the PAC’s perceived level of support by members of the Trump campaign.

⁷ Compl. at 2. (citing Betsy Fisher Martin and Tammy Haddad, *Alex Castellanos Revs Up Super-PAC for Trump*, BLOOMBERG POLITICS (July 22, 2016), <https://www.bloomberg.com/news/articles/2016-07-22/alex-castellanos-revs-up-super-pac-for-trump>); *see also* Betsy Fisher Martin and Tammy Haddad, MASTERS IN POLITICS PODCAST (July 22, 2016), <https://soundcloud.com/bloomberg-business/episode-14-alex-castellanos>, at 0:01:45 (last visited Aug. 13, 2018).

⁸ *See* Compl. at 6 (assuming that “[t]he intended recipient of the \$6 million requested [on July 15th] can be gathered from Mr. Manafort’s unofficial endorsement of [Rebuilding America Now] . . . just days after”).

⁹ *See* MUR 7135, FGCR at 7 (citing MUR 6939 (Mike Huckabee, *et al.*), Factual & Legal Analysis).

II. LEGAL ANALYSIS

Candidates for federal office and their agents shall not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”¹⁰ Following *Citizens United v. FEC*¹¹ and *Spechnow.org v. FEC*,¹² the Commission concluded that corporations, labor unions, and individuals may each make unlimited contributions to Super PACs.¹³ The Commission also concluded that, while Super PACs may *accept* such unlimited contributions, “the Act’s solicitation restrictions remain applicable to *contributions solicited by* Federal candidates . . . and their agents.”¹⁴ Thus, for the 2016 federal elections, an agent of a presidential candidate could “solicit up to \$5,000 from individuals (and any other source not prohibited by the Act from making a contribution to a political committee) on behalf of [a Super PAC], because those funds are subject to the Act’s amount limitations and source prohibitions.”¹⁵

Commission regulations define “solicitation” as an explicit or implicit “oral or written communication . . . that contains a *clear* message asking, requesting, or recommending that another person make a contribution.”¹⁶ The regulation states that the communication should be “construed as reasonably understood in the context in which it is made.”¹⁷ The communication’s “context” includes “the conduct of the persons involved in the communication.”¹⁸ A solicitation must always be “clear,” but especially so when the solicitation does not mention parties or candidates and does not overtly ask for money.¹⁹ This test is objective, and does not turn on the subjective interpretations of the speaker or the recipients.²⁰ The Commission has explained that

¹⁰ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

¹¹ 558 U.S. 310 (2010).

¹² 599 F.3d 686 (D.C. Cir. 2010).

¹³ *See, e.g.*, Advisory Opinion 2010-11 (Commonsense Ten).

¹⁴ Advisory Opinion 2011-12 at 4 (Majority PAC) (emphasis in original).

¹⁵ *Id.* at 3 (citing 52 U.S.C. 30116(a)(1)(A) and 11 C.F.R. § 300.61); *see also* Contributions Limits for 2015-2016 Federal Elections, Fed. Election Comm’n <http://www.fec.gov/info/contriblimitschart1516.pdf> (last visited Jan. 27, 2017).

¹⁶ 11 C.F.R. § 300.2(m)(emphasis added); *see also* *Explanation and Justification for Definitions of “Solicit” and “Direct,”* 71 Fed. Reg. 13926, 13927 (Mar. 20, 2006) (“2006 Solicitation E&J”).

¹⁷ 11 C.F.R. § 300.2(m).

¹⁸ *Id.*; *see also* 2006 Solicitation E&J at 13929.

¹⁹ *See Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005); *see also* 2006 Solicitation E&J at 13927.

²⁰ 2006 Solicitation E&J at 13928.

its objective standard “hinges on whether the recipient should have reasonably understood that a solicitation was made.”²¹

The July 20, 2016 Conference Call

Manafort’s July 15th statement on television was the act alleged to constitute the prohibited solicitation to Sheldon Adelson,²² and the Complaint cites no provision of the Act alleged to have been violated by Manafort solely by his speaking to supporters of the PAC on July 20th. Thus, having considered and rejected the only allegation in the Complaint, OGC should have recommended that this matter be dismissed. Yet, OGC proceeded to examine whether Manafort solicited excessive contributions in violation of the Act during the July 20, 2016, meeting of PAC contributors,²³ ultimately recommending that the Commission find reason to believe that Manafort made a prohibited solicitation at that event.

The Complaint, however, fails to meet the evidentiary burden required at the reason to believe stage. The Complaint alleges that Manafort said “there’s no better way to help elect Donald Trump than to support [the] PAC, Rebuilding America Now.”²⁴ The facts in the record tell a different story. The reported statement — the apparent basis for OGC’s recommendation — was made, not by Manafort, but by Alex Castellanos, an agent of the PAC.²⁵ Castellanos

²¹ *Id.* at 13929.

²² The Complaint appears to link the two events in alleging that Manafort solicited Sheldon Adelson for a contribution to the Super PAC. However, as noted above, Manafort did not solicit Adelson during the appearance on Fox and Friends, and no evidence in the record suggests that Adelson participated in the July 20th event. Thus, there is insufficient evidence to satisfy even the threshold question of whether Sheldon Adelson was a “recipient” of the purported solicitation, to say nothing of whether it should be “reasonably understood” as a solicitation of funds from him. *See* 2006 Solicitation E&J at 13929 (explaining that “under the revised [regulation], the Commission’s objective standard hinges on whether the recipient should have reasonably understood that a solicitation was made”).

²³ Anticipating this course of action, the Response denies that Manafort made a solicitation in the July 20th call, asserting that his comments at the PAC event do not qualify as a “solicitation” under Commission regulations. *See* Response at 5 (“Manafort’s Briefing at a Super PAC Event Was Not a Solicitation Under Commission Regulations.”). The Response also defends Manafort speaking at the PAC event, noting that such activity is permitted under Commission regulations and advisory opinions. *Id.* at 6.

²⁴ Compl. at 2.

²⁵ Resp. at 5. The complainant was certainly capable of identifying the correct speaker, as shown by its accurate description — in the very next sentence — that it was Alex Castellanos who said “I don’t think any other PAC is getting that kind of encouragement.” *See* Compl. at 2. By incorrectly assuming the “let folks know that there’s no better way to help elect Donald Trump than to support [Rebuilding America Now]” was a statement by Manafort, OGC makes the same mistake as the Complaint. *Compare* MUR 7135, FGCR at 3 (correctly reading the news article at issue to state “Paul Manafort also called into the meeting and, according to Castellanos, ‘gave [Rebuilding America Now] contributors a briefing on the state of the campaign and let folks know that there’s no better way to help elect Donald Trump than to support our PAC, Rebuilding America Now’”), *with* MUR 7135, FGCR at 7 (inaccurately stating “Manafort also allegedly *said* that ‘there is no better way to help elect Donald Trump than to support [the] PAC, Rebuilding America Now.’”) (emphasis added).

does not purport to quote Manafort, but instead generally describes Castellanos’s version of events.

Even assuming *arguendo* that the Complaint’s attribution of the statement to Manafort was correct, and further assuming that the statement matches what Manafort actually said during the July 20, 2016, telephone call, the legal status of the statement as a solicitation remains in doubt. The statement differs significantly from the communications identified in the Commission’s regulation as solicitations, all of which reference money or financial support (*i.e.*, contributions or donations), as opposed to political support.²⁶

Nevertheless, OGC — noting that Respondents “did not proffer any alternate quote or summary”²⁷ — concludes that “the available information” (*i.e.*, Castellanos’ portrayal alone coupled with a lack of an alternate quote) and the regulations indicate that Manafort’s July 20 comments were a solicitation.²⁸ Rather than acknowledge that the Commission has *no* information indicating Manafort made a solicitation, let alone solicited more than the permissible amount from permissible sources,²⁹ OGC hypothesizes that “*if* Manafort’s actual comments were substantially similar to Castellanos’ summary, it would be reasonable . . . to believe that Manafort was recommending they contribute to [the PAC].”³⁰

²⁶ See 11 C.F.R. § 300.2(m)(2). Moreover, the statement does not “provide[] a method of making a contribution . . . [such as] providing a separate card, envelope, or reply device”; did not “provide[] instructions on how or where to send contributions”; and did not “identify[] a Web address where the Web page displayed is specifically dedicated to facilitating the making of a contribution.” 11 C.F.R. § 300.2(m)(1)(i)-(iii).

²⁷ See FGCR at 8. OGC’s use of the words “alternate quote” itself is misleading and indicates recognition and acceptance of a critical factual error: namely, that the statement in the complaint *was* a quote of Manafort. Moreover the fact that Respondents’ denial did not include an “alternate quote” does not weigh against them. See MUR 6277 (Robert E. Kirkland), Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 10 (“[I]nitiated an investigation on the basis that the [responses] contain general denials . . . would be especially inappropriate, since it would essentially shift the burden of proof to respondents”); MUR 4850 (Deloitte & Touche, LLP, *et al.*), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2, (“The burden of proof does not shift to a respondent merely because a complaint is filed.”).

²⁸ *Id.*

²⁹ OGC relies on one online news article (found nowhere in the record) in an effort to show that excessive contributions were made — and, by implication, solicited — by Manafort. See MUR 7135, FGCR at 3 (citing *Trump Blesses Major Super PAC Effort*, POLITICO (July 20, 2016), <https://www.politico.com/story/2016/07/trump-super-pac-donors-225892>). The reasons why such conduct is improper prior to an affirmative vote of the Commission to find reason to believe has been discussed at length. See MUR 6540 (Rick Santorum for President, *et al.*), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 5-16; MUR 6462 (Donald Trump), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 3-7; see also *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[FEC] investigations . . . may begin only if an individual first files a signed, sworn, notarized complaint with the Commission [and if the Commission finds reason to believe]. The Commission’s duty *thereafter* is “expeditiously” to conduct a confidential investigation *of the complaint.*”) (emphasis added).

³⁰ See MUR 7135, FGCR at 8 (emphasis added).

Speculation and presumption, however, are not a sufficient basis on which to find reason to believe.³¹ Indeed, the record weighs in favor of Respondents here given that Manafort's participation in the July 20, 2016 event is permissible under the Act and Commission regulations and there are no facts that indicate he made a solicitation — assuming that he made a solicitation — of amounts in excess of the amount limitations or outside the source prohibitions of the Act.

III. CONCLUSION


The Commission long ago determined that it is not appropriate to find reason to believe absent reliable evidence of a violation of the Act.³² Such evidence is not present here. The Complaint relied on a misattributed unsworn statement of another, did not allege the violation for which OGC recommends finding reason to believe, and lacked any indication — even assuming the statement at issue constituted a solicitation — that Manafort violated the Act here. Thus, a finding of reason to believe that Manafort made a prohibited solicitation on July 20, 2016 is not

³¹ Even under the permissive standard of the Federal Rules of Civil Procedure, a complaint must still *show* more than a mere possibility of unlawful conduct. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not ‘show[n]’ — ‘that the pleader is entitled to relief.’”) (quoting Federal Rule of Civil Procedure 8(a)(2)). The Complaint here fails even this low bar. We have on multiple occasions shown that the reason to believe standard found at 52 U.S.C. § 30109(a)(2) means more than merely a reason to suspect. *See, e.g.*, MUR 6296 (Buck for Colorado), Statement of Reasons of Vice-Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 7 (“[T]he Act’s complaint requirements and limits on Commission investigative authority serve no purpose if the Commission proceeds anytime it can imagine a scenario under which a violation may have occurred.”); MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n.12 (“[T]he RTB standard is not met if the Commission simply ‘did not have . . . sufficient information to find *no* reason to believe’ The Commission must have more than . . . unanswered questions before it can vote to find RTB and thereby commence an investigation.”); MUR 5467 (Michael Moore), First Gen. Counsel’s Rpt. at 5 (“Purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [Act] has occurred.”); *see also FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations”); *id.* at 387 (distinguishing the Commission from other administrative agencies that are “vested with broad duties to gather and compile information and to conduct periodic investigations concerning business practices. . . . the FEC has no such roving statutory functions”). Here, we incorporate our earlier statements’ articulation of the proper interpretation of the reason to believe standard.

³² *See* MUR 3534 (Bibleway Church of Atlas Road, Inc.), Statement of Reasons of Chairman Scott E. Thomas, Vice Chairman Trevor Potter, and Commissioners Joan D. Aikens, Lee Ann Elliot, Danny Lee McDonald, and John Warren McGarry at 2 (rejecting OGC recommendation because the complaint was “vague” as to the content of communications at issue, and because “there was a lack of evidence” that the communications were distributed on behalf of the respondent); MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas (determining mere allegations in a newspaper (specifically an unsubstantiated quote) that could be read multiple ways was insufficient evidence to find reason to believe); *id.* at 1-2 (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. . . . Unwarranted legal conclusions from asserted facts, *see* SOR in MUR 4869 (American Postal Workers Union), or mere speculation, *see* SOR of Chairman Wold and Commissioners Mason and Thomas in MUR 4850 (Fossella), will not be accepted as true.” (some citations omitted)). Here the Complainant has no personal knowledge of the July 20th event and no knowledge as to what Manafort (as opposed to Castellanos) actually said.

justified, and the Commission's vote should have been a unanimous dismissal. For these reasons, and in exercise of our prosecutorial discretion, we voted against finding reason to believe and to close the file.³³


Caroline C. Hunter
Chair


Date


Matthew S. Petersen
Commissioner


Date

³³ See *Heckler v. Chaney*, 470 U.S. 821 (1985); *CREW v. FEC*, No. 17-5049, 2018 WL 2993249 (D.C. Cir. June 15, 2018). One of our colleagues expresses irritation that we did not vote to find reason to believe in this matter (and others involving the same respondents). See MUR 7135 (Donald J. Trump for President, Inc., *et al.*), Statement of Reasons of Vice Chair Ellen L. Weintraub (“My colleagues appear to have little interest in investigating any alleged violations by the Trump Committee or its [former] campaign manager, Paul Manafort.”). Contrary to our colleague’s assertion, however, we always base our decisions on the law and the information (or lack thereof) in the record — not the identities of the parties.