FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Michael C.J. Vanderkemp

Bordentown, New Jersey 08505-1424

FEB 15 2019

RE: MUR 7308

Dear Mr. Vanderkemp:

The Federal Election Commission previously notified you of a complaint alleging that you may have violated the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on February 5, 2019, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Adam H. Victor
TransGas Development Systems, LLC
Garry Coulter
Nana Yoshioka
Marta Dani
Randall Harris
Noel Daley
Michael C.J. Vanderkemp
Joshua Krakowsky
Glenn Willard

MUR: 7308

This matter was generated by a Complainant who asks the Commission to reconsider his previous complaints in MURs 7005 and 7056, which alleged that Adam H. Victor made contributions in the names of employees, business associates, and members of Victor's family.[1] Those earlier matters resulted in a conciliation agreement with Victor and TransGas Development Systems, LLC, in which the Respondents admitted to knowingly and willfully violating the Federal Election Campaign Act of 1971, as amended (the "Act"), and paid a $65,000 civil penalty.[2] The Commission did not pursue the straw donors through which Victor

[1] MUR 7308 Compl. at 3-4; *see also* First Gen. Counsel's Rpt. at 1-7, MURs 7005 and 7056 (Adam H. Victor, *et al.*). Two political committees were the recipients of the contributions: Manchin for West Virginia, the principal campaign committee of Joe Manchin III's 2012 Senate campaign, and Friends of Herman Cain, the principal campaign committee for Herman Cain's 2012 presidential campaign. Neither committee was named as a respondent in MURs 7005 and 7056 or in the instant matter.

[2] *See* Conciliation Agreement, MURs 7005 and 7056. TransGas Development Systems, LLC ("TGDS"), is a single-member LLC of which Victor is the sole member. *Id.* at ¶ IV.1. Victor was also criminally prosecuted and pled guilty to one count of making contributions in the names of others in violation of 52 U.S.C. §§ 30122 and 30109(d)(1)(D)(i) and 18 U.S.C. § 2. *See* Plea Agreement, *United States v. Victor*, 1:17-cr-00053 (D.D.C. Apr. 19, 2017). On March 6, 2018, Victor was sentenced to probation for a term of one year, a $52,500 fine, and a $100 assessment. *See* Judgment in a Criminal Case, *United States v. Victor*, 1:17-cr-00053 (D.D.C. Mar. 8, 2018).

made his contributions.[3] Complainant now alleges that Victor, through intimidation, bribery, threats of physical harm, and other methods, caused the Commission to receive false or misleading testimony from respondent straw donors in the earlier matters.[4] The Complaint requests, among other things, that the Commission reopen MURs 7005 and 7056, including Victor's conciliation agreement, and seek harsher penalties against him.[5]

Specifically, the new Complaint asserts that Victor threatened the straw donors if they refused to sign the witness statements in response to the Complaints in MURs 7005 and 7056.[6] It also alleges that two of Victor's lawyers, Joshua Krakowsky and Glenn Willard, participated in this conspiracy by drafting false declarations for the conduits.[7] According to Complainant, these actions resulted in reduced civil penalties and, with respect to some respondents, the inability for the Commission to find reason to believe and arrive at a civil penalty.[8]

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[3] *See* First Gen. Counsel's Rpt. at 15, MURs 7005 and 7056; Second Amended Certification, MURs 7005 and 7056 (Nov. 16, 2016); Memorandum to the Commission, Pre-Probable Cause Conciliation and Case Closing at 2-4, MURs 7005 and 7056 (July 26, 2017); Certification, MURs 7005 and 7056 (Aug. 3, 2017).

[4] MUR 7308 Compl. at 3-8.

[5] *Id.* at 43.

[6] *Id.* at 4-5. The Complainant refers to several witness statements that had declared under penalty of perjury that payments from Victor or his companies were reimbursements for travel expenses, purchases or, other personal expenses of the alleged straw donors, and several other witness statements that "unidentified payments and/or checks referenced in [the MUR 7005 Complaint] were not paid to [Respondent]." *Id.* at 21; *see also* First Gen. Counsel's Rpt. at 6-7, MURs 7005 and 7056.

[7] MUR 7308 Compl. at 5-6. The Complaint also alleges that Krakowsky bribed a witness on Victor's behalf during litigation unrelated to the allegations addressed in MURs 7005 and 7056. *Id.* at 31-35.

[8] *Id.* at 16. The MUR 7308 Complaint names as respondents many of the same alleged straw donors, excluding Victor's family members, named in MURs 7005 and 7056.

Respondents Krakowsky and Willard each assert that the Complaint does not allege that they respectively engaged in activity that violated the Act.[9] Krakowsky states that he "never prepared any document that to [his] knowledge was false in any way and submitted to the FEC."[10] He also maintains that he has "never prepared any draft witness statements that [he] knew contained false information" and does not "recall ever meeting in person with any witnesses involved in this case other than Adam Victor."[11] The only other responses to the MUR 7308 Complaint came from Marta Dani and Nana Yoshioka, who each maintained that further comment was unnecessary given the resolution of MURs 7005 and 7056.[12] Yoshioka further requested that the Commission dismiss the Complaint.[13]

A number of the allegations in this matter, such as conspiracy, bribery, and witness tampering, are not within the Commission's jurisdiction. To the extent the new Complaint provides new information regarding alleged violations of the Act, the contributions at issue

9 Krakowsky Resp. at 2 (Mar. 16, 2018); Willard Resp. at 1 (Feb. 2, 2018).

10 Krakowsky Resp. at 2.

11 *Id.*

12 Dani Resp. at 1 (Mar. 26, 2018); Yoshioka Resp. at 1 (Feb. 22, 2018).

13 Yoshioka Resp. at 1.

occurred during the 2012 election cycle and are beyond the statute of limitations.[14] In addition, the Commission conciliated with Victor on a knowing and willful basis with a substantial civil penalty, suggesting that Victor's alleged coercion of witnesses did not result in more favorable treatment.[15]

Because the Commission conciliated with Victor in MURs 7005 and 7056 and all the violations of the Act alleged in the new Complaint are beyond the statute of limitations, the Commission has determined to dismiss the Complaint in MUR 7308.

[14] The Complaint provides new information concerning alleged straw donor Garry Coulter, alleging that the check ledger of TGDS references a check in the amount of $7,500 payable to Coulter dated December 21, 2011. MUR 7308 Compl. at 18-19. The Complaint asserts that $2,500 of that amount was used to cover Coulter's $2,500 contribution to Manchin for West Virginia on December 30, 2011, with the remainder reflecting Coulter's monthly $5,000 consulting fee from TGDS. *Id.* This proximity of a check from Victor with a political contribution is consistent with the pattern for certain straw donors in MURs 7005 and 7056. *See* First Gen. Counsel's Rpt. at 8-9, MURs 7005 and 7056. Coulter did not respond to the MUR 7308 Complaint, although in response to the MUR 7005 Complaint he denied participating in a straw donor scheme and claimed that all of the payments he received were management consulting services. Coulter Resp. to MUR 7005 Complaint at 1-2 (Feb. 18, 2016). Coulter's $2,500 contribution to the Manchin Committee was included among Victor's conduit contributions at the reason to believe stage of the earlier matters. *See* First Gen. Counsel's Rpt. at 14-15, MURs 7005 and 7056; Factual and Legal Analysis addressed to Victor at 12, MURs 7005 and 7056; Second Amended Certification, MURs 7005 and 7056 (Nov. 16, 2016). Victor's affidavit admitting to making numerous contributions in the name of another, negotiated during the investigative stage, does not include Coulter's contribution, at Victor's request and in light of the lack of evidence showing that Coulter's contributions were reimbursed. *See* Gen. Counsel's Rpt. #2 at 2 n.5, MURs 7005 and 7056; Certification, MURs 7005 and 7056 (Apr. 27, 2017). As a result, the conciliation agreement accepted by the Commission does not include Coulter's contribution. *See* Memorandum to the Commission, Pre-Probable Cause Conciliation and Case Closing, MURs 7005 and 7056 (June 26, 2017); Certification, MURs 7005 and 7056 (Aug. 3, 2017). In any event, the Coulter contribution is beyond the statute of limitations.

[15] Further, it was apparent at that time that the factual statements in the witness affidavits were not credible. *See* First Gen. Counsel's Rpt. at 12, MURs 7005 and 7056 (characterizing the witnesses' explanations regarding the sequence of events as "remarkable coincidences," and not as likely as the explanation that "Victor gave them money for the purpose of making political contributions").