



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By Email and First Class Mail

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AUG - 9 2019

RE: MUR 7450
Ashbritt, Inc.

Dear Mr. Moskowitz:

On August 8, 2018, the Federal Election Commission ("Commission") notified your client, Ashbritt, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and information provided by you, the Commission, on July 23, 2019, found that there is reason to believe that Ashbritt, Inc. violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. We request that all responses to the enclosed Request for Written Answers and Production of Documents be submitted to the Office of the General Counsel within 30 days of your receipt of this notification. Any additional materials or statements you wish to submit should accompany the response to the Request for Written Answers and Production of Documents. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission

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either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne Robinson, the attorney assigned to this matter, at (202) 694-1650 or arobinson@fec.gov.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis
Request for Written Answers and Production of Documents

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Ashbritt, Inc.

MUR 7450

I. INTRODUCTION

The Complaint alleges that Ashbritt, Inc. (“Ashbritt”) is a federal contractor that contributed \$500,000 to America First Action, Inc. and Jon Proch in his official capacity as treasurer (the “Committee” or “AFA”), an independent-expenditure-only political committee (“IEOPC”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ Ashbritt asserts that the contribution was from its Chairman, Randal Perkins, rather than Ashbritt itself and contends that AFA corrected the contributor information in the relevant AFA disclosure report after Ashbritt “advised [AFA] that it was a personal contribution.”² Based on the available information and for the reasons set forth below, the Commission finds reason to believe that Ashbritt made a contribution in violation of 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).

II. FACTUAL BACKGROUND

Ashbritt is a Subchapter S corporation registered in Florida, and its website states it provides “rapid-response disaster recovery and special environmental services” as “a contractor for the U.S. Army Corps of Engineers.”³ Perkins is the founder and Chairman of Ashbritt and is

¹ Compl. at 1-2 (Aug. 1, 2018).

² *Id.*; Ashbritt Resp. at 1 (Sept. 17, 2018).

³ Ashbritt Resp. at 1; Ashbritt, About Us, <http://www.ashbritt.com/about/>; *see* Florida Div. of Corps., Detail by Entity Name, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=ASHBRITT%20P920000006000&aggregateId=domp-p92000000600-f837aed0-d4df-436b-9f44-95cfcfb0bdc5&searchTerm=ashbritt&listNameOrder=ASHBRITT%20P920000006000>.

1 the “beneficial owner of a majority of Ashbritt’s stock.”⁴ AFA is an IEOPC registered with the
2 Commission.⁵

3 AFA reported receiving a \$500,000 contribution from Ashbritt, Inc. on April 11, 2018.⁶
4 The Complaint alleges that Ashbritt has numerous contracts with the federal government,
5 including several that were ongoing at the time of the contribution.⁷ For example, the Complaint
6 identifies a \$41,698,565 contract with the Department of Defense with a performance period of
7 January 12 to June 30, 2018.⁸ The Complaint also notes that for one of its contracts with the
8 Department of Defense, Ashbritt received a supplemental agreement worth \$459,675 on
9 April 10, 2018, just one day before Ashbritt made the contribution to AFA.⁹ Ashbritt also had a
10 contract worth \$160,497,319 to provide debris removal services to the Department of Defense
11 with a performance period of December 8, 2017, to May 30, 2018.¹⁰

12 In its response, Ashbritt does not deny it was a federal contractor at the time of the
13 contribution. Instead, Ashbritt contends that “[u]pon learning that the contribution had been
14 reported as coming from Ashbritt, Mr. Perkins immediately advised [AFA] that it was a personal

⁴ Ashbritt Resp. at 1; *see also* Ashbritt 2019 Florida Profit Corp. Annual Report (Mar. 14, 2019), <http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=domp-p92000000600-f837aed0-d4df-436b-9f44-95cfcfb0bdc5&transactionId=p92000000600-34d939c2-ab79-45f0-900e-1cdf169d8469&formatType=PDF> (stating that Perkins is Chairman of Ashbritt). Perkins is also listed as Operations Advisor on Ashbritt’s website. Ashbritt, Team Members, http://www.ashbritt.com/team_member/randal-r-perkins/.

⁵ AFA Amend. Statement of Organization (Nov. 14, 2017); AFA, <https://www.alapac.org/>.

⁶ AFA 2018 Pre-Primary Report at 6 (May 24, 2018).

⁷ Compl. at 2.

⁸ *Id.* at 4, note 9 (citing USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/65497534>).

⁹ *Id.* at 4 (citing USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/66926361>).

¹⁰ *See id.* at note 9 (citing USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/62661522>).

1 contribution.”¹¹ Ashbritt asserts that it “maintains a loan and distribution account for” Perkins
2 and that “[f]rom time to time, checks may be written on Ashbritt’s account that are personal (and
3 not corporate) expenses and are properly chargeable to the Randy Perkins loan/distribution
4 account.”¹² Ashbritt states that this “was the case with the contribution at issue here.”¹³
5 Specifically, Ashbritt states the \$500,000 check was written “from an Ashbritt account” but “was
6 charged to Mr. Perkins’s personal loan/distribution account.”¹⁴ Ashbritt did not provide any
7 documentation of a charge to Perkins’s loan/distribution account.

8 **III. LEGAL ANALYSIS**

9 A “contribution” is defined as “any gift . . . of money or anything of value made by any
10 person for the purpose of influencing any election for Federal office.”¹⁵ Under the Act, a federal
11 contractor may not make contributions to political committees.¹⁶ Specifically, the Act prohibits
12 “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of
13 personal services or furnishing any material, supplies, or equipment to the United States or any
14 department or agency thereof” from making a contribution “if payment for the performance of
15 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”¹⁷
16 These prohibitions begin to run at the beginning of negotiations or when proposal requests are
17 sent out, whichever occurs first, and end upon the completion of the contractor’s performance

¹¹ Ashbritt Resp. at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 52 U.S.C. § 30101(8)(A)(i).

¹⁶ 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2.

¹⁷ 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

1 under the contract or termination of negotiations, whichever occurs last.¹⁸ And these
2 prohibitions apply to a federal contractor who makes contributions to any political party, political
3 committee, federal candidate, or “any person for any political purpose or use.”¹⁹ Stockholders,
4 officers, or employees of a corporation that is a federal contractor are not prohibited from
5 making contributions or expenditures from their personal assets.²⁰

6 In matters involving transfers of funds from corporations to political committees, the
7 Commission has determined that funds not yet distributed to shareholders are corporate, not
8 personal, funds. In MUR 3191 (Christmas Farm Inn), the Commission found probable cause to
9 believe that a candidate committee accepted corporate contributions by receiving loans from the
10 candidate’s Subchapter S corporation’s assets rather than the candidate’s personal funds.²¹ In
11 MUR 3119 (Edmar Corp.), the Commission found probable cause to believe that a Subchapter S
12 corporation contributed to a candidate who was the corporation’s majority shareholder by
13 loaning her funds that she used to make contributions to her campaign.²² The Commission also
14 found reason to believe that respondents in MUR 5655 (Rick Renzi for Congress) violated the

¹⁸ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

¹⁹ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2; *see also* MUR 7099 (Suffolk Construction Company) (Commission found reason to believe that federal government contractor made a prohibited contribution to an IEOPC).

²⁰ *See* 11 C.F.R. § 115.6.

²¹ Certification, MUR 3191 (Christmas Farm Inn) (Sept. 14, 1994) (available at <https://www.fec.gov/files/legal/murs/3191.pdf> at 565).

²² Certification, MUR 3119 (Edmar Corp.) (Jan. 6, 1993) (available at <https://www.fec.gov/files/legal/murs/3119.pdf> at 193).

1 Act in connection with loans the candidate made to his campaign that had come from two
2 Subchapter S corporations that he owned.²³

3 The record indicates that Ashbritt was a federal contractor at the time the contribution
4 was made. Ashbritt's website states that it "has been a contractor for the U.S. Army Corps of
5 Engineers (USACE) for 20 years," and government records indicate that it was engaged in
6 several federal contracts in April 2018, and therefore, was prohibited from making a contribution
7 to a political committee.²⁴ For the reasons set forth below, we conclude that there is reason to
8 believe that Ashbritt violated the Act and Commission regulations by making a contribution to
9 AFA while serving as a federal contractor.

10 Although officers and employees of corporations may make contributions from their
11 personal funds, the limited information Ashbritt provided does not substantiate that Perkins used
12 his personal funds to make the contribution.²⁵ Ashbritt asserts that the contribution was charged

²³ Certification, MUR 5655 (Rick Renzi for Congress) (May 4, 2005); *cf.* Advisory Op. 1984-10 (Arnold & Porter LLP) (determining that the partnership, which was a federal contractor, owned the account from which the law firm wished to issue checks for authorized contributions made by partners and subsequently charge partners' personal accounts, and therefore, the partnership could not issue the checks); Advisory Op. 1982-13 (Sutherland, Asbill & Brennan) (approving a law firm's plan in which authorized contributions were attributed to partners and charged to their respective personal firm account and then deducted from the partners' respective monthly income distributions); Advisory Op. 1981-50 (Hansell, Post, Brandon & Dorsey) (determining that it was permissible for a law firm to charge authorized contributions to a partner's firm account and deduct the amount from that partner's account); Advisory Op. 1997-09 (Chicago Board of Trade) at 7 (determining that traders could use their personal margin accounts to make contributions only if the accounts held sufficient funds to cover the entirety of the contributions, so that the firm was "not extending credit to the trader or advancing firm funds to the trader and thus making the contribution itself").

²⁴ Ashbritt, About Us, <http://www.ashbritt.com/about/>; *see, e.g.*, USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/65497534>. Ashbritt also contributed to political committees in past election cycles. In 2016, Ashbritt contributed \$25,000 to Floridians for a Strong Middle Class, and in 2013, Ashbritt contributed \$5,000 to Ready PAC (then known as "Ready for Hillary"). *See* Floridians for a Strong Middle Class 2016 30-Day Post-General Report at 6 (Dec. 8, 2016); Ready PAC Amend. 2013 Year-End Report at 28 (Sept. 2, 2014).

²⁵ Ashbritt Resp. at 1; *see* 11 C.F.R. § 115.6.

1 to Perkins's "loan/distribution account,"²⁶ but provides no documents supporting its position,
2 such as an affidavit, a copy of the contribution check, or a cover letter supporting the
3 characterization of the funds as Perkins's, not Ashbritt's. There is no information in the record
4 that the contribution appeared to be anything other than a contribution from Ashbritt. The
5 record indicates that the funds in question were in an Ashbritt account when the check was
6 issued, and AFA disclosed it as such.

7 The available record indicates that Ashbritt was a federal contractor at the time of the
8 contribution, and Ashbritt has not sufficiently supported its position that the \$500,000
9 contributed by Ashbritt to AFA were actually Perkins's personal funds. Accordingly, the
10 Commission finds reason to believe that Ashbritt made a contribution in violation of 52 U.S.C.
11 § 30119(a)(1) and 11 C.F.R. § 115.2(a).

²⁶ Ashbritt Resp. at 1.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7450
)
)

**REQUEST FOR WRITTEN ANSWERS
AND PRODUCTION OF DOCUMENTS**

TO: Ashbritt, Inc.
 c/o Michael W. Moskowitz, Esq.
 Moskowitz, Mandell, Salim & Simowitz, PA
 800 Corporate Drive, Suite 500
 Fort Lauderdale, FL 33334

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, 1050 First Street NE, Washington, DC 20463, on or before the same deadline. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals. We request that you produce documents and communications in an easily readable format (*i.e.*, PDF).

1. Produce all documents and other information relating to the \$500,000 check issued by Ashbritt, Inc. to America First Action, Inc. in or about April 2018 (“Ashbritt Check”), including, but not limited to:
 - a. a copy of the canceled Ashbritt Check, front and back, and any documents enclosed with the check when it was sent to America First Action, Inc.;
 - b. copies of all communications between Randal Perkins or any other officer, employee, representative, or agent of Ashbritt, Inc. and any officer, employee, consultant, representative, or agent of America First Action, Inc. relating to the Ashbritt Check;
 - c. copies of all communications between and among employees of Ashbritt, Inc. related to the Ashbritt Check;
 - d. copies of written communications not already provided in response to Requests 1.a, 1.b, and 1.c above;
 - e. the substance of oral communications not already provided in response to Requests 1.b, 1.c, and 1.d above;

- f. bank statements of Ashbritt, Inc. related to the Ashbritt Check.
2. Produce all documents and other information supporting the statement in Ashbritt, Inc.'s response to the Complaint in MUR 7450 that the Ashbritt Check was "charged to Mr. Perkins's personal loan/distribution account," including, but not limited to:
 - a. copies of all communications between Randal Perkins or any other officer, employee, representative, or agent of Ashbritt, Inc. and any officer, employee, consultant, representative, or agent of America First Action, Inc.;
 - b. copies of all communications between and among employees of Ashbritt, Inc.;
 - c. copies of written communications not already provided in response to Requests 2.a and 2.b above;
 - d. the substance of oral communications not already provided in response to Requests 2.a, 2.b, and 2.c above;
 - e. bank statements of Ashbritt, Inc. related to the Ashbritt Check;
3. Produce any Ashbritt, Inc. document including, but not limited to, by-laws, minutes of corporate meetings, corporate resolutions, or policies that provided that, at the time the Ashbritt check was written, Randal Perkins had the authority to charge a personal political contribution to his Ashbritt loan and distribution account.
4. Provide the name, telephone numbers, residential addresses, and email addresses of each Ashbritt employee appearing in any document provided or otherwise named in a response to the requests above, and include the employee's title, duties, and responsibilities.
5. Provide the names, telephone numbers, residential addresses, email addresses, and title of the person(s) providing information responsive to these requests.