



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 20, 2021

Via Email

bfischer@campaignlegalcenter.org
sgonsalvesbrown@campaignlegalcenter.org

Mr. Brendan M. Fischer
Ms. Sophia Gonsalves-Brown
Campaign Legal Center
1411 K Street NW, Suite 1400
Washington, DC 20005

RE: MUR 7450 (AshBritt, Inc.)

Dear Mr. Fischer and Ms. Gonsalves-Brown:

This is in reference to the complaint you filed with the Federal Election Commission on August 1, 2018, concerning AshBritt, Inc. ("AshBritt"). The Commission found that there was reason to believe that AshBritt violated 52 U.S.C. § 30119(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 115.2(a). On July 13, 2021, a signed conciliation agreement was accepted by the Commission. In addition, the Commission dismissed the allegation that America First Action, Inc., violated 52 U.S.C. § 30119(a)(2) by knowingly soliciting a federal contractor contribution. Accordingly, the Commission closed the file in this matter on July 13, 2021.

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). A copy of the agreement with AshBritt and the Commission's Factual and Legal Analysis is enclosed for your information.

If you have any questions, please contact me at (202) 694-1021.

Sincerely,

Richard Weiss

Richard L. Weiss
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)	
)	
AshBritt, Inc.)	MUR 7450
)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Campaign Legal Center through Brendan M. Fischer. The Commission found reason to believe that AshBritt, Inc. (“AshBritt” or “Respondent”), violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) by making a contribution as a federal contractor.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. AshBritt is a Florida-based emergency management and disaster response company. AshBritt is also a federal government contractor, and has been the recipient of government contracts and grants.

2. On April 11, 2018, while AshBritt was in federal contractor status, it made a \$500,000 contribution to America First Action, Inc. (“AFA”), an independent-expenditure-only political committee.

3. On October 27, 2016, while AshBritt was in federal contractor status, it made a \$25,000 contribution to Floridians for a Strong Middle Class, an independent-expenditure-only political committee that terminated in 2020 with zero cash on hand.

4. On May 19, 2021, AFA refunded Respondent’s \$500,000 contribution.

5. On June 1, 2021, AFA amended the relevant disclosure report to reflect AshBritt, Inc. as the contributor of that contribution.

6. Respondent contends that at the time of the contribution, it believed that it consisted of the personal funds of Respondent’s CEO, that the mistaken belief described herein was inadvertent, and that Respondent requested voluntary resolution of this matter and has been cooperative with the Commission during conciliation. Respondent will implement new, additional internal controls, policies, and procedures to prevent similar errors in the future, including having outside legal counsel assist with the vetting of certain contributions.

7. The Commission did not find that the violation was knowing and willful.

V. The pertinent law in this matter is as follows:

1. Under the Federal Election Campaign Act of 1971, as amended (the “Act”), a federal contractor may not make contributions to political committees. 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2. Specifically, the Act prohibits “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof” from making a contribution “if payment for the performance of such contract . . . is to be made in

whole or in part from funds appropriated by the Congress.” 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. § 115.

2. These prohibitions begin to run at the beginning of negotiations or when proposal requests are sent out, whichever occurs first, and end upon the completion of performance of the contract or the termination of negotiations, whichever occurs last. 52 U.S.C. § 30119 (a)(1); 11 C.F.R. § 115.1(b).

3. These prohibitions apply to a federal contractor who makes contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.” 52 U.S.C. § 30119(a)(1); 11 C.F.R. §§ 115.1, 115.2.

VI. Respondent violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) by making federal contractor contributions.

VII. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Commission in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000) pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).

3.

VIII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

X. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This conciliation agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: Charles Kitcher
Charles Kitcher
Acting Associate General Counsel
for Enforcement

7/19/21
Date

FOR THE RESPONDENT:

Randy Perkins
Randy Perkins
CEO

10/21/2021
Date

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>.

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

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

In its response, Ashbritt does not deny it was a federal contractor at the time of the contribution. Instead, Ashbritt contends that “[u]pon learning that the contribution had been 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>).

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

III. LEGAL ANALYSIS

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

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

In matters involving transfers of funds from corporations to political committees, the Commission has determined that funds not yet distributed to shareholders are corporate, not personal, funds. In MUR 3191 (Christmas Farm Inn), the Commission found probable cause to believe that a candidate committee accepted corporate contributions by receiving loans from the candidate’s Subchapter S corporation’s assets rather than the candidate’s personal funds.²¹ In MUR 3119 (Edmar Corp.), the Commission found probable cause to believe that a Subchapter S corporation contributed to a candidate who was the corporation’s majority shareholder by loaning her funds that she used to make contributions to her campaign.²² The Commission also 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.