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10/30/18

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

VIA EMAIL: cela@fec.gov

Re: MUR 7491: Response to Complaint from American Ethane Company, LLC and John Houghtaling

Dear Mr. Jordan:

We are writing this letter on behalf of American Ethane Company, LLC ("AEC") and John Houghtaling (collectively, the "Respondents"), in response to the Complaint filed in the above-referenced matter by William Rodney Allen. The Complaint apparently attempts to allege that AEC made impermissible contributions to various federally-registered political committees using foreign funds. However, the Complaint contains no facts to support that allegation, and is instead based entirely on a speculative blog post and a misunderstanding of federal law. Again, there are no facts alleged in the Complaint that the funds AEC used to make political contributions were derived from a foreign source or directed by a foreign principal. In fact, the opposite is true. The contributions were made entirely from permissible funds, and the contribution decisions were made by John Houghtaling in his sole discretion as CEO and President of AEC.

The Federal Election Commission (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 Act.[1] Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true.[2] Moreover, the Commission will dismiss a complaint when the

[1] *See* 11 C.F.R. § 111.4(a), (d).

[2] *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

allegations are refuted with sufficiently compelling evidence.[3] As explained in more detail below, the allegations made in the Complaint do not support a reason to believe finding in this matter. Thus, the Commission should either dismiss the Complaint on its face, or find no reason to believe a violation of the Federal Election Campaign Act of 1971 (the "Act") or the Commission's regulations occurred with respect to the Respondents.

Factual Background

AEC is a U.S.-based energy company headquartered in Houston, Texas. John Houghtaling is AEC's President and CEO. Mr. Houghtaling, a U.S. citizen, is also part-owner of AEC. While AEC's Board of Directors is composed of other individuals, some of whom are foreign nationals, all decisions regarding AEC's political contributions, including amount and recipient, are made solely by Mr. Houghtaling. Additionally, while AEC has received investment from non-U.S. sources, it has also considerable domestic funds.

The Complaint bases its allegation on an article in a local Louisiana blog called *The Bayou Brief*, and apparently attempts to contend that AEC may have made impermissible contributions to various federally-registered political committees simply because it has foreign nationals on its Board of Directors. Neither the Complaint nor the article, however, set forth specific facts indicating that a prohibited contribution was made. Although Complainant expounds on various alleged events related to the 2016 Presidential Election that he finds "troubling," those events have nothing to do with Respondents.

Legal Analysis

The Act and Commission regulations prohibit a foreign national from directly or indirectly making a contribution or donation of money in connection with a federal, state, or local election.[4] In addition, the Act and Commission regulations prohibit a foreign national from directly or indirectly making an expenditure, an independent expenditure, or a disbursement in connection with a federal, state, or local election.[5] The Act and Commission regulations define "foreign national" to include "foreign principals," as defined in 22 U.S.C. 611(b), and individuals who are not citizens or nationals of the United States and who are not lawfully admitted to the United States for permanent residence.[6] Under 22 U.S.C. 611(b)(3), "foreign principal" includes corporations organized under the laws of or having its principal place of business in a foreign country.

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Congress amended the Act to strengthen and expand the ban on campaign contributions and donations by foreign nationals. However, when promulgating the Final Rules, the Commission indicated that it found no

[3] *See id.*

[4] 52 U.S.C. 30121(a)(1)(A); 11 C.F.R. 110.20(b).

[5] 52 U.S.C. 30121(a)(1)(C); 11 C.F.R. 110.20(f).

[6] 52 U.S.C. 30121(b); 11 C.F.R. 110.20(a)(3).

evidence of Congressional intent to broaden the prohibition on foreign national involvement in U.S. elections to cover U.S. subsidiaries of foreign corporations. Consequently, the Commission determined that "indirectly" did not apply to donations made by such entities.[7]

The Commission based its determination on the lack of Congressional intent and on substantial policy reasons set forth in the long line of "advisory opinions over more than two decades that have affirmed the participation of such subsidiaries in elections in the United States, either directly in states where state law permits, or through separate segregated funds with regard to federal elections, so long as there is no involvement of foreign nationals in decisions regarding such participation." [8] Consistent with this determination, the Commission has continued to permit domestic subsidiaries of foreign corporations to make contributions and donations in connection with U.S. elections after BCRA and the Commission's implementing regulations became effective, provided that the conditions set forth in Commission regulations and past advisory opinions were satisfied.

As mentioned, Commission regulations provide that foreign nationals shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, with regard to such person's federal or non-federal election-related activities, including decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any federal, state, or local office.[9] However, the Commission has explained that a subsidiary may make contributions if the decision-making process involves only U.S. Citizens. For instance, in past advisory opinions analyzing how a subsidiary may permissible contribute to a political committee, the Commission has emphasized the requirement that foreign nationals, who are either on the corporate board or hold other positions with the corporation, may not vote on the selection of individuals who would operate an associated PAC or exercise decision-making authority with respect to contributions and expenditures by an associated PAC, or by the domestic corporation itself in domestic elections.[10]

In Advisory Opinion 2000-17, a domestic subsidiary had a board of directors that included one U.S. citizen and two foreign nationals and which was wholly owned by a foreign national corporation. The Commission concluded that the board was permitted to make "general corporate policy decisions" to establish or terminate a separate segregated fund, or to establish a special committee or "other corporate personnel group" limited to U.S. citizens or lawfully admitted permanent residents that would administer the SSF. The board was also permitted to set a specific budget level for the direct costs of the SSF at a "not to exceed" amount, and it could enforce compliance with this overall budget level. The Commission determined that all other decisions concerning the administration of the SSF must be made by the special committee or other group limited to U.S. citizens or lawfully admitted permanent residents in order to comply with 11 CFR 110.20(i).

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7 *See* Contribution Limitations and Prohibitions, Final Rules, 67 Fed. Reg. 69928, at 69943 (Nov. 19, 2002).

8 *Id.* at 6994.

9 11 CFR 110.20(i).

10 Advisory Opinions 1992-16, and 1990-8.

Additionally, the Commission has explained that in order to make political contributions, a subsidiary must demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent, to make the contribution. In Advisory Opinion 1992-16, the domestic subsidiary of a foreign corporation proposed to use net earnings generated by the subsidiary in the United States and from segregated accounts that were not subsidized by the foreign corporate parent to make political donations. The Commission explained that such donations were permissible, provided the subsidiary could demonstrate through a reasonable accounting method that it had sufficient funds in its accounts, other than funds given or loaned by its foreign national parent corporation, from which the donations were made.

Discussion

The Complaint in this matter is based on a severe misunderstanding of federal election law. As both the Complaint and the blog on which it is based state, "It is against federal law for a campaign to accept contributions from a foreign-owned corporation, a foreign national, or any LLC owned or controlled by foreign nationals." But as explained, that statement ignores decades' worth of Commission guidance on how subsidiaries of foreign corporations may make contributions to political committees, and it makes incorrect assumptions about AEC's funding and political contribution decision making.

Instead, the Respondents fully complied with the Commission's requirements for a partially foreign-owned entity to contribute to political committees. First, AEC is a domestic company headquartered in the U.S. Second, all the funds used to make the contributions in question were permissible domestic funds, as derived through a loan secured by Houghtaling Enterprises, now referred to as H Ventures, a corporate entity in which Mr. Houghtaling has a 100% ownership interest. Finally, the entire decision-making process was solely controlled by John Houghtaling, a U.S. citizen, in his capacity as President and CEO of AEC. We have attached a sworn declaration from Mr. Houghtaling supporting these facts.

In light of this information, the Commission must find no reason to believe a violation occurred. AEC has been fully transparent about its organizational structure publicly and to all governmental inquiries. That AEC has foreign nationals on its Board of Directors or is partially-owned by foreign investors does not a create a violation of federal law. Complainant's baseless conspiracy theories and speculations are nothing more than that, and they cannot justify a reason to believe finding.

Conclusion

As stated, there are no facts alleged in the Complaint that AEC's contributions were from funds derived from a foreign source or that the contributions were directed by a foreign principal, and we have attached a sworn declaration from AEC's President and CEO to the contrary. Accordingly, the only evidence before the Commission indicates that no violation occurred. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact us directly at (202) 572-8663 with any questions.

Respectfully submitted,

Charles R. Spies
Derek H. Ross
Sloane S. Carlough
Counsel to American Ethane Company, LLC and John Houghtaling

DECLARATION OF JOHN HOUGHTALING

My name is JOHN HOUGHTALING. I have personal knowledge of the facts set forth herein, and declare as follows:

1. I am a United States citizen.

2. I am President and CEO of American Ethane Company, LLC. ("AEC").

3. AEC is a United States-based company headquartered in Houston, Texas.

4. I have reviewed the Complaint in MUR 7491 and allegations therein and discussed them with counsel.

5. I, in my role as President and CEO of AEC, was solely responsible for any and all decisions related to AEC's past political contributions.

6. All funds used by AEC to make political contributions were domestic funds, as derived through a loan secured by Houghtaling Enterprises, now referred to as H Ventures, a corporate entity in which I have a 100% ownership interest.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 29 day of October, 2018.

John Houghtaling

City: Metairie

State: Louisiana