



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

Via Electronic Mail

January 21, 2021

Eric F. Long, Esq.
The IMG Center
1360 East 9th Street
Suite 650
Cleveland, Ohio 44114
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RE: MUR 7692
Scott Coleman

Dear Mr. Long:

On February 6, 2020, the Federal Election Commission (the "Commission") notified your client, Scott Coleman, of a complaint alleging that he violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided Mr. Coleman with a copy of the complaint.

After reviewing the allegations contained in the complaint, your client's response, and publicly available information, the Commission on January 12, 2021, found reason to believe that Scott Coleman knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), provisions of the Act, and 11 C.F.R. §§ 102.9, 104.3, 104.14(d) of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

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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 your client is interested in engaging in pre-probable cause conciliation, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1618 within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

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/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 matter 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.

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).

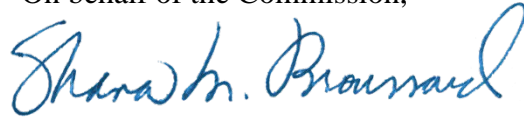
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We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, reading "Shana M. Broussard". The signature is fluid and cursive, with the first name "Shana" and last name "Broussard" clearly legible.

Shana M. Broussard
Chair

Enclosures

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 7692

RESPONDENT:

Scott E. Coleman

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the “Commission”) in the normal course of carrying out its supervisory responsibilities, *see* 52 U.S.C. § 30109(a)(2), and by a Complaint filed by Friends of Dave Joyce and Natalie Baur in her official capacity as treasurer (“Committee”) alleging that Scott E. Coleman (“Coleman”), former treasurer of the Committee, embezzled \$174,952.40 from the Committee.¹ Coleman made \$88,769 in unauthorized withdrawals from the Committee’s bank account in the form of ATM withdrawals, counter withdrawals, and cash back from bank deposits, and \$86,273.40 in unauthorized personal charges on the Committee’s credit card.

Coleman pled guilty to one count of grand theft in the 4th degree in connection with embezzling \$174,952.40 between January 1, 2015 and November 30, 2018. On August 30, 2019, Coleman made full restitution to the Committee in the amount of \$341,983.06 to cover the embezzled amounts, the legal fees associated with the criminal investigation, and the internal review costs. He was sentenced to on October 2, 2019, to 30 days in jail, 2 years’ probation, and a \$5,000 fine.

¹ Compl. at 1, Attachs., MUR 7692 (Scott Coleman) (Feb. 5, 2020). The Complaint attached a supplement to the Committee’s *Sua Sponte* submission. Pre-MUR 623 (Friends of Dave Joyce (Oct. 25, 2019) (“Suppl. Submission”). That supplement attached documents associated with Coleman’s criminal court case, and it referenced the Committee’s initial submission in Pre-MUR 623, but did not attach it. Suppl. Submission at 1.

Based on this information, there is reason to believe that Scott E. Coleman (“Coleman”) knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1) and 11 C.F.R. §§ 102.9, and 104.3, 104.14(d) of the Federal Election Campaign Act of 1971, as amended (the “Act”) by converting Committee funds to personal use, failing to keep complete Committee financial records, and failing to file accurate disclosure reports.

II. FACTUAL AND LEGAL ANALYSIS

A. BACKGROUND

Information in the Commission’s possession indicates that Rep. Dave Joyce (“Joyce”) was elected in 2012 to succeed Rep. Steven LaTourette for the 14th Congressional District of Ohio and chose to retain LaTourette’s campaign treasurer, Scott Coleman, as the Committee’s treasurer. Coleman, in his capacity as treasurer, was responsible for preparing and filing campaign finance reports, processing incoming contributions, reviewing reimbursement requests, and issuing refunds and disbursements. Information in the Commission’s possession provides that during the relevant period, Coleman and Dino DiSanto, committee campaign manager, were the only two authorized signatories on the Committee’s bank account.

1. Events Leading to Discovery of Embezzlement

Information in the Commission’s possession indicates that, on or about November 20, 2018, Coleman informed Joyce that DiSanto made four reimbursement requests totaling \$64,000 in connection with consulting services provided to the Committee. Joyce, being concerned about the amount of the reimbursement requests, met with Coleman on November 26, 2018, to discuss the DiSanto requests, as well as the overall financial condition of the Committee.

Information in the Commission’s possession indicates that during this same meeting, Joyce informed Coleman that his services were no longer required and requested that Coleman

turn over the Committee's books and records to the new treasurer, Natalie Baur. The same information in the Commission's possession indicates that Coleman resisted the request and offered to continue to serve as treasurer at no compensation. Coleman's resistance to the transition and delay in turning over the Committee's records and books for several weeks concerned both Joyce and Baur.² On December 12, 2018, Coleman produced an incomplete set of financial records to Baur, which failed to include the Committee's bank statements. On the same day, Joyce requested that the state prosecutor subpoena all of the Committee's bank records since he and Baur were not authorized to obtain them directly from the bank.

Information in the Commission's possession indicates that on or about January 23, 2019, Baur received the subpoenaed bank records showing that Coleman signed bank withdrawal slips totaling approximately \$4,000 from the Committee's account, and received cash back when depositing checks on several occasions.³ Baur's review of the bank records and video surveillance confirmed that between May 2015 and November 16, 2018, Coleman made regular, small, unauthorized ATM withdrawals that totaled approximately \$82,000.

2. Results of Criminal Investigation and Internal Review

On August 29, 2019, Coleman was charged with one count of grand theft in the 4th degree under Ohio Revised Code 2913.02(A)(1).⁴ Coleman pled guilty and was sentenced on

² Information in the Commission's possession indicates that as a result of Coleman's resistance, Joyce, on or about December 7, 2018, contacted the Geauga County Prosecutor's Office to report his suspicions about potential issues with the Committee's account. The prosecutor's office began its investigation by obtaining information regarding the Committee's bank account balance. Baur was able to confirm that the account balance matched the cash-on-hand figure last reported to the Commission in its disclosure report.

³ Information in the Commission's possession indicates that the criminal investigator ultimately did not subpoena Coleman's personal banking records or the credit card statements.

⁴ Suppl. Submission at 1.

October 2, 2019, to 30 days in jail, 2 years' probation, and a \$5,000 fine.⁵ On the same date, the Committee filed a Form 99 with the Commission detailing the results of the Committee's internal review.⁶ On August 30, 2019, Coleman made full restitution to the Committee in the amount of \$341,983.06 to cover the embezzled amounts, the legal fees associated with the criminal investigation, and the internal review costs.⁷

On October 25, 2019, the Committee filed a supplemental submission detailing the results of the criminal investigation, internal review, terms of Coleman's plea agreement, and steps taken to assist in the criminal investigation.⁸ The internal review of its financial records and disclosure reports covered the time period of January 1, 2015, through November 30, 2018.⁹ The internal review determined that Coleman embezzled \$174,952.40 from the Committee.¹⁰

According to the Committee, Coleman made \$88,769 in unauthorized withdrawals from the Committee's bank account in the form of ATM withdrawals, counter withdrawals, and cash back from bank deposits.¹¹ In addition, unbeknownst to Joyce, Coleman obtained a Committee credit card in his own name and incurred numerous expenses on it, both personal and campaign-

⁵ *Id.*

⁶ *See* Form 99, Friends of Dave Joyce (Aug. 29, 2019).

⁷ *Id.* The restitution payment is reflected on the Committee's 2019 October Quarterly Report. *See* 2019 October Quarterly Report, Friends of Dave Joyce (Oct. 15, 2019).

⁸ Suppl. Submission at 1.

⁹ *Id.*

¹⁰ *Id.* at 1-2. The Committee indicates that Coleman also reimbursed the campaign for \$6,675.85 for some additional expenses. *Id.* at 1. Information in the Commission's possession indicates that that the Committee did not have access to the underlying credit card statements—because the prosecutor's office did not subpoena them and Coleman did not produce them—so they used information gathered from its internal review in discussions with Coleman during the criminal investigation, and Coleman attested to its substantial accuracy before pleading guilty.

¹¹ Suppl. Submission at 2.

related.¹² Coleman paid the credit card balances by authorizing checks from the Committee's bank account.¹³ He then reported the campaign-related expenses as direct payments to the recipients rather than as payments to the credit card company with the expenses further itemized.¹⁴ In its supplemental submission, the Committee assumed that expenses on the Committee's disclosure reports that could not be reconciled with the underlying financial records had to have been paid with the credit card.¹⁵ Thus, the Committee concluded that the unauthorized expenses equal \$86,273.40, which is the difference between the amounts reported to the Commission and amounts paid to the credit card company, minus expenses that appeared to be campaign-related.¹⁶

B. LEGAL ANALYSIS

Each treasurer is required to keep an accurate account of and disclose, among other things, its receipts, disbursements, and cash-on-hand balances.¹⁷ The Act prohibits any person

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* Information in the Commission's possession indicates that the Committee identified numerous likely legitimate expenses reported to the FEC that were most likely paid by credit card but could not be matched with a specific payment from the Committee's bank account. Since these expenses could not be matched with a particular payment to the credit card company, but would have accounted for a portion of the excessive amounts paid to the credit card company identified in other transactions, the prosecutor agreed with the Committee that the total amount of such expenses (\$26,246.98) should be deducted from the total amount of underreported payments (\$113,511.88). This yielded a total amount of \$87,264.90 in fraudulent expenses. During the criminal investigation, Coleman agreed to both the accuracy of this methodology and the amounts. There are slight discrepancies between the amount of fraudulent credit card expenses shown on the Committee's supplemental submission, \$86,273.40, the amount shown on the documents used in the criminal investigation, \$87,264.90, and the amount on the Form 99 filed by the Committee, \$87,802.84. *See* Suppl. Submission at 1; Form 99. However, as the differences are relatively minor, we will assume that the lowest figure (\$86,273.40) is correct.

¹⁷ 52 U.S.C. § 30104(a), (b).

from converting contributions to a federal candidate to personal use.¹⁸ The Act prescribes additional monetary penalties for violations that are knowing and willful.¹⁹ A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.”²⁰ This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.²¹ Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.”²² This awareness may be shown through circumstantial evidence from which the respondent’s unlawful intent reasonably may be inferred.²³

The available information, including the Committee’s internal audit, the criminal investigation, and the plea agreement, confirms that Coleman converted campaign funds to personal use. Coleman pleaded guilty to embezzling \$174,952.40 from the Committee by making \$88,679 in unauthorized ATM withdrawals from its bank account and by incurring

¹⁸ *Id.* § 30114(b)(1). A contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of federal office. *Id.* § 30114(b)(2).

¹⁹ *Id.* §§ 30109(a)(5)(B), 30109(d).

²⁰ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

²¹ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

²² *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

²³ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

numerous personal expenses totaling \$86,273.40 on the Committee's credit card, which Coleman had paid with the Committee's funds.²⁴

In addition, the information supports a knowing and willful finding. Coleman, without informing Joyce or any other Committee employee, obtained a committee credit card in his own name, incurred numerous personal expenses totaling \$86,273.40, and paid for them with Committee funds.²⁵ In an effort to conceal his embezzlement, Coleman also failed to disclose \$84,160 in contributions, timely refund \$5,200 in corporate contributions, and report \$22,109.61 in refunds to vendors as offsets to operating expenditures.²⁶ Coleman's actions, which caused the Committee to underreport and misreport its receipts, disbursements and cash-on-hand balances, indicate an intent to conceal the embezzlement.²⁷

Therefore, the Commission finds reason to believe that Scott E. Coleman knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), and 11 C.F.R. §§ 102.9, 104.3, 104.14(d) by converting Committee funds to personal use, failing to keep complete Committee financial records, and failing to file accurate disclosure reports.

²⁴ See Resp., Attach (Coleman Sentencing Memorandum), MUR 7692 (Coleman) (Apr. 3, 2020).

²⁵ Suppl. Submission at 2.

²⁶ See Form 99.

²⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3.