



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 28, 2021

VIA ELECTRONIC MAIL

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Nancy L. Cohen, Esq.
Cohen Black Law, LLC
1888 Sherman Street
Suite 770
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RE: MUR 7729
Ryan Call

Dear Ms. Cohen:

On April 28, 2020, the Commission notified your client, Ryan Call, of a complaint alleging that he violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided Mr. Call with a copy of the complaint.

After reviewing the allegations contained in the complaint and your client's response, the Commission, on June 24, 2021, found reason to believe that Ryan Call knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and 30104(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, 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 your client has 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 Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov, within seven days of receipt of this letter. During conciliation, your client may submit any factual or legal materials that he believes 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 thirty 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 Complaints 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

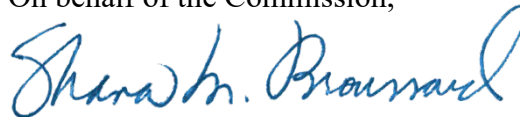
This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible 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 written in a cursive style with a large, looping initial "S".

Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondent: Ryan Call

MUR 7729

I. INTRODUCTION

This matter arose from a Complaint filed by Rebuilding America Now and Chris Marston in his official capacity as treasurer (the “Committee”) alleging that Ryan Call, the former treasurer of the Committee, misappropriated Committee funds by disbursing the funds to himself and deliberately misreporting Committee funds by falsely reporting payments to the law firm where Call was employed, Hale Westfall, that were in fact made to him. Call denies embezzling funds from the Committee.

The Commission finds that there is reason to believe that Ryan Call knowingly and willfully violated 52 U.S.C. § 30102(b)(3) by commingling Committee funds with his personal funds and that he knowingly and willfully violated 52 U.S.C. § 30104(b) by failing to file accurate reports with the Commission.

II. FACTUAL SUMMARY

A. Complaint

The Committee is an independent expenditure-only political committee that was established in 2016.¹ Call served as treasurer of the Committee from June 2016 to June 2019² and he also was employed as an attorney at Hale Westfall. Hale Westfall is a law firm based in

¹ See Statement of Organization (June 12, 2016).

² See *id.*; Amended Statement of Organization (June 4, 2019).

Denver, Colorado, which provided legal and compliance services to the Committee; Call was the primary attorney at the law firm working with the Committee.³

The Committee filed a Complaint alleging that Call had misappropriated and deliberately misreported Committee funds between September 2016 and January 2019.⁴ The Commission has information that Call received Committee funds that he was not authorized to receive in the form of checks, cash withdrawals, debit charges, and wire transfers. The Complaint indicates that payments were made directly to Call and reported as being paid to him, and other payments were made to him, but either falsely reported as made to his law firm, Hale Westfall, or were not reported at all on the Committee's disclosure reports.⁵

The Complaint alleges that Call received unauthorized funds totaling \$278,169.45 including three checks made out to him for \$5,000 each; a "'bank originated debit,' likely a cashier's check, which appears to be payable to Call for \$23,135"; five automated teller machine withdrawals totaling \$1,700; a debit card charge by him in New Orleans for \$900.42; and 32 wire transfers totaling \$237,434.03 made out to him with the payee listed as "First Bank/Ryan Call," "First Bank/Ryan Richard Call," "Ryan Call," or "Ryan R. Call."⁶ The Commission also has information that the wire transfers were directed to Call's personal bank account. Further, the Commission has information that Call made deposits into the Committee's account from his personal funds totaling \$47,446.34, and the funds may have been a reimbursement of Committee funds previously misappropriated.

³ See Compl., Ex. 2 (Apr. 22, 2020).

⁴ Compl, Ex. 4.

⁵ Compl. at 3., Ex. 4.

⁶ Compl., Ex. 4.

According to the information available to the Commission, there was a segregation of duties between the treasurer, Call, who was responsible for handling and processing disbursements and preparing disclosure reports to the Commission, and the assistant treasurer, Chris Marston, who was responsible for handling contributions and deposits and reconciling bank records. Further, the Commission has information that despite efforts to maintain divided responsibilities for financial management, Call was able to avoid detection of his embezzlement. The Commission also has information that, beginning in November 2016, Call shifted some of the responsibilities to avoid discovery of his actions. There is information available to the Commission that after the 2016 election, Call stopped providing regular cash-on-hand updates to Marston and to Committee consultants, and Marston and Call worked less closely together. The Committee removed Call and appointed Chris Marston as treasurer on June 4, 2019, and it has amended the relevant disclosure reports based on the information and documentation it has been able to recover.⁷

The Complaint alleges that Call failed to properly account for receipts and disbursements and maintain records of all transactions, and falsely reported the Committee's receipts and disbursements.⁸

The Complaint includes additional examples of Call's alleged violations. Some Committee payments were made to Call, but allegedly appeared as payments to the law firm.

⁷ See Amended Statement of Organization (June 4, 2019); Amended 2016 October Quarterly Report at 59 (Mar. 5, 2020); Amended 2016 Pre-General Report at 19 (Mar. 5, 2020); Amended 2016 Post-General Report at 21 (Mar. 5, 2020); Amended 2016 Year-End Report at 8 (Mar. 5, 2020); Amended 2017 Year-End Report at 7-10 (Mar. 5, 2020); Amended 2018 April Quarterly Report at 9-10 (March 5, 2020); Amended 2018 July Quarterly at 7 (Mar. 5, 2020); Amended 2018 October Quarterly Report at 7, 9 (Mar. 5, 2020); Amended 2018 Post-General Report at 8 (Mar. 5, 2020); Amended 2018 Year-End Report at 7-8 (Mar. 5, 2020); and Amended 2019 Mid-Year Report at 7-8 (Mar. 5, 2020).

⁸ Compl. at 2-4.

For example, the Complaint claims that Call was the payee on a transaction for \$23,135 reportedly made to Hale Westfall, but that this transaction is not reflected in Hale Westfall's records.⁹ The Complaint also alleges that Call entered into a political consulting contract with the Committee in which he signed both as treasurer of the Committee and as the consultant or payee, and no persons associated with the Committee were aware of this contract and no records or evidence exist of the performance of this contract.¹⁰ Overall, the Committee alleges that for a period of nearly three years, Call filed numerous false and misleading disclosure reports to disguise his unauthorized disbursements.¹¹ Finally, the Complaint claims that there were recordkeeping problems because many expense reimbursements were made to persons that were not accompanied by receipts or underlying documentation.¹²

B. Response to Complaint

Call asserts that both he and Marston were authorized signers on the Committee's bank account, and that Marston routinely reviewed bank statements and had access to and utilized the campaign finance reporting software system.¹³ Under the engagement agreement between the Committee and the law firm, Call claims that his duties were supposed to be limited to legal and campaign compliance matters, which would amount to 10 to 15 hours per week.¹⁴ However, he claims that his responsibilities quickly expanded to managing the day-to-day political operations

⁹ Compl. at 3.

¹⁰ *Id.*

¹¹ *Id.* at 3, 4.

¹² *Id.* at 2, 3.

¹³ Call Resp. at 2 (Aug. 10, 2020).

¹⁴ *Id.* at 3; *see* Compl. Ex. 2 at 3.

of the Committee and that he thus spent more than 40 hours per week on Committee activities.¹⁵

Call asserts that in July 2016 he had the Committee pay him for this additional operational, strategic, and political consulting work, and that, as treasurer, he had the sole authority to approve and make these additional payments.¹⁶ As he performed legal and compliance duties along with the consulting work, in May 2017, Call asserts that he determined that a flat, monthly retainer of \$5,000 was appropriate for the political consulting, that he had discussions with Committee consultant Lawrence Gay about the monthly retainer, and that Marston was aware of the payments.¹⁷ Call claims that, in August 2017, he formalized the monthly retainer by executing a separate political consulting contract with the Committee, signing on behalf of the Committee as well on behalf of himself.¹⁸ Call claims that he used the same type of contract that the Committee used for other vendors and political consultants.¹⁹

Regarding specific allegations that the Committee made against him, Call asserts that the allegation that he misappropriated \$278,169.45 is misleading because the Committee has conflated the payments made pursuant to his contract with the Committee with the payments made to the law firm and to Committee consultant Lawrence Gay.²⁰ Call claims that this amount does not take into account reimbursements made by him to the Committee in 2018 and 2019 as

¹⁵ Call Resp. at 3.

¹⁶ *Id.* During this period, Call claims, there was an instance where the Committee paid him \$33,000 for political consulting, but the services provided were better characterized as legal and compliance-related so Call paid this amount to Hale Westfall because he perceived the law firm to be the “ultimate vendor.” *Id.*

¹⁷ Call Resp. at 3.

¹⁸ *Id.* at 4; Ex. A.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

offsets against payments made.²¹ Finally, Call asserts that the Committee had access to Committee records and information inputted into an associated software system and had opportunities to review any discrepancies or irregularities during his tenure as treasurer.²² With respect to specific concerns about the wire transfer payment of \$23,135 to him on November 23, 2016, Call asserts that this payment was for his political consulting for the Committee, and was not related to legal and compliance services provided by Hale Westfall.²³ In regard to expense reimbursements to vendors and political consultants such as Lawrence Gay, Call asserts that he had no reason to question the information on the invoices from Gay and that committees rely upon invoices in paying consultants or vendors.²⁴ Finally, Call denies all other allegations made in the Complaint.²⁵

Call also states that he is reluctant to provide any additional information and documentation in this matter because of an ongoing investigation of the Committee by the Department of Justice and to avoid the possible disclosure of attorney-client privileged information or work product.²⁶ Call states that after the Department of Justice investigation of

²¹ *Id.*

²² *Id.*

²³ *Id.* at 8.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 8. During the fall of 2018, Call asserts that he learned that the U.S. Attorney's office for the Eastern District of New York was investigating the Committee and also learned of another investigation in December 2018 concerning the Committee and certain consultants and media vendors. *Id.* at 4. In January 2019, Call asserts, he was informed of other issues involving the Committee and political consultants and vendors and feared that the Committee or its consultants might try to mischaracterize his work or shift blame to him for some of the Committee's actions. *Id.* Call states that in August 2019 he was contacted by the Department of Justice about an investigation of the Committee and that he has cooperated with the investigation. *Id.*

the Committee is complete, he will be willing to provide additional information and documentation to clarify his response to the Complaint.²⁷

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.²⁸

The Act also requires that a political committee’s funds shall be segregated from and may not be commingled with, the personal funds of any individual.²⁹

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.”³⁰ This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.³¹ Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.”³² This awareness may be shown through circumstantial evidence from which the respondent’s unlawful intent reasonably may be inferred.³³ For

²⁷ Call Resp. at 8.

²⁸ 52 U.S.C. § 30104(a); *see also* 52 U.S.C. § 30104(b).

²⁹ 52 U.S.C. § 30102(b)(3).

³⁰ 122 Cong. Rec. 12,197, 12,199 (daily ed. May 3, 1976).

³¹ *United States v. Danielczyk*, 917 F. Supp. 2d 573 (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)).

³² *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)).

³³ *Cf. United States v. Hopkins*, 916 F. 2d 207, 213 (5th Cir. 1990) (quoting *United States V. Bordelon*, 871 F.2d 491 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth

example, a person's awareness that an action is prohibited may be inferred from "the person's elaborate scheme for disguising . . . the political contribution."³⁴

The Committee alleges that Call filed false reports with the Commission and misappropriated Committee funds by making unauthorized payments to himself. Call denies the allegations but has not provided a detailed explanation about the Committee funds that he received. Call asserts that the Complaint does not distinguish between payments made to him as a political consultant through his separate contract with Committee and payments made to Hale Westfall. Some of these payments to him were not disclosed on the Committee disclosure reports he filed. Call created a separate political consulting contract with the Committee with his name listed on behalf of the Committee as treasurer and also as the consultant. Call asserts that Marston and some Committee consultants were aware of his separate contract with the Committee, but the Committee claims to have no knowledge of this contract or any work performed by Call pursuant to this contract.

Further, the Committee alleges that Call made deposits totaling \$47,446.34 into the Committee's bank account from his personal funds, which may have been reimbursements for funds taken out of the Committee's bank account. In his response to the Complaint, Call acknowledges making reimbursements to the Committee account, but asserts that these deposits were offsets for payments to him. According to the Committee, these deposits were not reported

Circuit concerned the sufficiency of the evidence supporting the defendant's convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

³⁴ *Id.* at 214-215. As the *Hopkins* court noted, it has long been recognized that 'efforts at concealment may be reasonably explainable only in terms of motivation to evade' lawful obligations.' *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

on the Committee's disclosure reports.³⁵ Call has not explained or described the payments that he is referencing in additional detail. If these payments to him were improper, as the Committee has alleged, Call appears to have commingled Committee funds with his personal funds.

By taking unauthorized funds from the Committee, disclosing payments to him as being made to Hale Westfall or not disclosing the payments to him at all, Call violated 52 U.S.C. § 30104(b). Further, these violations appear to be knowing and willful because they were designed to cover up his alleged embezzlement. Thus, the Commission finds that there is reason to believe that Ryan Call knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 52 U.S.C. § 30104(b).

³⁵ Compl., Ex. 4. The Committee amended its reports to reflect that Call made these deposits in 2018 and 2019. *See* Amended 2018 Year-End Report at 7 (Mar. 5, 2020); Amended Mid-Year 2019 Report at 7 (Mar. 5, 2020).