FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 16, 2021

John W.H. Harding
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
JWHarding@winston.com

RE: MUR 7878
Hal Teitelbaum

Dear Mr. Harding:

On March 8, 2018, Crystal Run Healthcare, LLP, notified the Federal Election Commission in a *sua sponte* submission of the possibility that it and your client, Dr. Hal Teitelbaum, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Your client joined in that submission on March 25, 2018.

After reviewing your submission, on January 28, 2021, the Commission found reason to believe that your client violated 52 U.S.C. § 30122 by permitting his name to be used for reimbursed contributions. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

In addition, 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. 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. 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]

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

[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).

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.

If your client is interested in engaging in pre-probable cause conciliation, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov, 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 5*2 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are 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/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,

Shana M. Broussard
Chair

Enclosures:
Factual and Legal Analysis
Conciliation Agreement

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Hal Teitelbaum **MUR:** 7878

I. INTRODUCTION

This matter arises out of a *sua sponte* submission (the "Submission") filed by Crystal Run Healthcare, LLP ("Crystal Run"), notifying the Commission that it had reimbursed seventeen physicians who were partners of Crystal Run for federal contributions made in the names of the physicians.[1] Crystal Run's Managing Partner and Chief Executive Officer, Hal Teitelbaum, joined in the Submission.[2]

Records produced by Crystal Run and disclosure reports filed with the Commission indicate that between 2012 and 2016, Teitelbaum was reimbursed by Crystal Run for seven contributions totaling $14,200. Accordingly, the Commission finds that Hal Teitelbaum violated 52 U.S.C. § 30122 by permitting his name to be used for reimbursed contributions.

II. FACTUAL BACKGROUND

Crystal Run is a multi-specialty physician partnership that has operated in the Hudson Valley and lower Catskill region of New York State since 1996.[3] Hal Teitelbaum is the founder, Managing Partner, and Chief Executive Officer of Crystal Run.[4] Michelle Koury is its Chief Operating Officer.[5] Eric Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael

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1 *See* Crystal Run *Sua Sponte* Submission (Mar. 8, 2018) ("Initial Submission"); Crystal Run Supplemental *Sua Sponte* Submission (May 16, 2018) ("First Supp. Submission"); Crystal Run Supplemental *Sua Sponte* Submission (June 11, 2018) ("Second Supp. Submission").

2 *See* Hal Teitelbaum Supplemental *Sua Sponte* Submission (May 22, 2019) ("Teitelbaum Submission");.

3 First Supp. Submission at 1.

4 *Id.*

5 *Id.*

Fakhoury, William Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep Singh (collectively, the "non-executive conduits") are all physicians who are partners at Crystal Run.

For at least nine years, Crystal Run has made contributions to New York state political candidates through both the partnership's doctors and the partnership itself. Crystal Run reimbursed many of the individual doctors' New York state political contributions, which it believed to be permissible under New York law, and these reimbursements were approved by either Teitelbaum or Koury as executives of the partnership.[6] Conduits were asked to provide receipts of contributions to Crystal Run in order to be reimbursed by the partnership,[7] and Crystal Run made these reimbursements by increasing the conduit-doctor's income allocation from the partnership, plus a "gross up" to cover any additional taxes owed.[8]

In 2010, Crystal Run began sporadically reimbursing its doctors' contributions to *federal* political candidates that partnership management (specifically, Teitelbaum and Koury) determined to be beneficial to Crystal Run.[9] According to the Respondents, Crystal Run and its partners generally presumed that reimbursements for federal contributions were permissible

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[6] First Supp. Submission at 2-3. Under New York law, a partnership can make state or local contributions of up to $2,500 as a distinct legal entity under the same limits as an individual but without attributing any portion to individual partners. A partnership that contributes more than $2,500 to a committee must attribute the contribution to one or more individual partners, who are deemed the real contributors for purposes of contribution limit compliance and public disclosure. *See* N.Y. Elec. Law § 14-120.

[7] *See, e.g.*, Email from Lynn Haskin to unknown recipients (Nov. 17, 2015, 3:25 PM), CR-FEC1-0004762 ("If you would like to be reimbursed by the Practice for your first $500 donation for the Congressman Maloney fundraiser, please submit to me a copy of your cancelled check or if you make your donation online, a copy of the receipt by the end of the month. You can then expect to see reimbursement in your December 15th paycheck.").

[8] *See* Stout Risius Ross, LLC, Forensic Procedures re: Crystal Run Healthcare LLP 12, 17 (May 8, 2019) (report of forensic accountants to FEC regarding Crystal Run's internal investigation).

[9] First Supp. Submission at 3.

because under New York law, partnership contributions that exceed $2,500 are attributed to one or more individual partners who are then deemed the real contributors.[10]

Crystal Run's practice of reimbursing partners' federal contributions became routine by 2012.[11] Between June 22, 2012, and September 6, 2016, Crystal Run reimbursed thirty-six contributions totaling $44,805 made by seventeen doctors.[12] Over the seven-year period during which Crystal Run reimbursed federal contributions, many were made under Teitelbaum's name (seven contributions totaling $14,200).[13] The chart below details all the federal contributions Crystal Run reimbursed:[14]

Date	Conduit Name	Recipient Name	Amount Reimbursed
09/22/2010	Michelle Koury	Friends of Nan Hayworth	$1,500
06/29/2011	Michelle Koury	Friends of Nan Hayworth	$195
06/22/2012	Michelle Koury	Friends of Nan Hayworth	$1,155
07/30/2012	Michelle Koury	Friends of Nan Hayworth	$310
08/17/2012	Michelle Koury	Sean Patrick Maloney for Congress	$1,000
	Hal Teitelbaum	Sean Patrick Maloney for Congress	$2,500
08/31/2012	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	$2,500
	Jennifer Teitelbaum	Friends of Julian Schreibman	$2,500
09/25/2012	Michelle Koury	Friends of Nan Hayworth	$1,540
06/18/2013	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	$2,400
11/11/2013	Michelle Koury	Sean Patrick Maloney for Congress	$1,000
11/22/2013	William Gotsis	Sean Patrick Maloney for Congress	$500
12/04/2013	Hal Teitelbaum	Sean Patrick Maloney for Congress	$2,600
12/29/2013	Hal Teitelbaum	Sean Patrick Maloney for Congress	$1,000

[10] *See* First Supp. Submission at 2-3 (citing N.Y. Elec. Law § 14-120); *see also* Teitelbaum Submission at 3.

[11] In 2010 and 2011, only two contributions were reimbursed by Crystal Run, both made by Koury to Friends of Nan Hayworth, the principle campaign committee for a candidate for Representative of New York's 18th Congressional District. First Supp. Submission at 8-9. On December 29, 2011, Hal Teitelbaum made a $1,000 contribution to Friends of Maurice Hinchey using Crystal Run check stock; however, the contribution was paid with Teitelbaum's personal funds, and, as a result, appears to have been made by him individually in compliance with the Act. First Supp. Submission at 9.

[12] *Id.* at 8-9. Of the total $46,500 reimbursed between 2010 and 2016, $25,800 remains within the statute of limitations.

[13] *Id.*

[14] *Id.*

Date	Conduit Name	Recipient Name	Amount Reimbursed
06/18/2014	Michelle Koury	Sean Patrick Maloney for Congress	$1,600
03/31/2015	Michelle Koury	Sean Patrick Maloney for Congress	$1,000
	Hal Teitelbaum	Sean Patrick Maloney for Congress	$2,700
	Hal Teitelbaum	Sean Patrick Maloney for Congress	$2,700
	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	$2,700
	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	$2,700
11/04/2015	Jonathan Nasser	Sean Patrick Maloney for Congress	$500
11/05/2015	Laura Nicoll	Sean Patrick Maloney for Congress	$500
11/10/2015	Manuel Perry	Sean Patrick Maloney for Congress	$500
11/15/2015	Rosa Cirillo	Sean Patrick Maloney for Congress	$500
	Robert Dinsmore	Sean Patrick Maloney for Congress	$500
11/18/2015	Zewditu Bekele-Arcuri	Sean Patrick Maloney for Congress	$500
	Emmanuel Schenkman	Sean Patrick Maloney for Congress	$500
11/19/2015	Michelle Koury	Sean Patrick Maloney for Congress	$1,000
	Wael Fakhoury	Sean Patrick Maloney for Congress	$500
	Michael Miller	Sean Patrick Maloney for Congress	$500
11/20/2015	Eric Barbanel	Sean Patrick Maloney for Congress	$500
	Lezode Kipoliongo	Sean Patrick Maloney for Congress	$500
	Florence Lazaroff	Sean Patrick Maloney for Congress	$500
	Sandeep Singh	Sean Patrick Maloney for Congress	$500
12/03/2015	Gurvinder Sethi	Sean Patrick Maloney for Congress	$500
06/01/2016	Hal Teitelbaum	Will Yandik for Congress	$2,700
06/06/2016	Michelle Koury	Sean Patrick Maloney for Congress	$700
09/06/2016	Michelle Koury	American Medical Group Ass'n PAC	$1,000
		Total:	**$46,500**

According to the Submission, Crystal Run learned reimbursing federal campaign contributions was illegal in December 2017.[15] In an unrelated civil action, plaintiffs alleged that Crystal Run had made hundreds of thousands of dollars in campaign contributions to New York Governor Andrew Cuomo without consulting the physicians, and that these contributions were

[15] *Id.* at 5. Crystal Run, through Kelley Drye, first contacted OGC via telephone on January 31, 2018, and filed its initial *sua sponte* submission on March 8. Initial Submission. Crystal Run submitted a Supplemental Response on May 16, 2018, relating the bulk of its internal review, and an additional Supplemental Response on June 11, 2018, with minor follow-up. First Supp. Submission; Second Supp. Submission. Teitelbaum, Koury, and the non-executive conduits joined in the Submission in late March 2019. Teitelbaum Submission.

illegal.[16] Based upon concerns raised by the state court action, Teitelbaum authorized Crystal Run to hire the law firm of Kelley Drye, which retained forensic accounting firm Stout Risius Ross, LLC, to conduct an internal review of Crystal Run's accounts between 2010 and 2017.[17] According to the Submission, it was during that review that Crystal Run learned that its practice of reimbursing federal political contributions was illegal.[18] As a result, Crystal Run informed two recipients of reimbursed contributions, Sean Patrick Maloney for Congress and the American Medical Group PAC, of the improper reimbursements and requested refunds of the associated contributions.[19]

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits a person from making a contribution in the name of another or knowingly permitting his or her name to be used to effect such a contribution.[20] The term "person" for purposes of the Act and Commission

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[16] Compl. at ¶¶ 51-52, *Sodha v. Crystal Run Healthcare LLP*, No. 70606/2017 (N.Y. Sup. Ct. Dec. 19, 2017) ("Another thing Plaintiffs recently learned as a result of recent press coverage was that Crystal Run and its senior executives had apparently made hundreds of thousands of dollars in campaign contributions to a public official whose administration then made decisions favorable to Crystal Run. Plaintiffs were not consulted about the decision of Crystal Run's management to make these payments."); *see also* Chris Bragg, *Lawsuit Alleging "Self-Dealing" by Crystal Run Cites Cuomo Contributions*, ALBANY TIMES UNION, Dec. 22, 2017, https://www.timesunion.com/news/article/Lawsuit-alleging-self-dealing-by-Crystal-Run-12451047.php.

[17] First Supp. Submission at 5.

[18] *Id.*

[19] *Id.* at 16. Crystal Run states that "[n]one of the other federal campaigns that received . . . reimbursed contributions appear viable," indicating that it has not requested refunds from those campaigns. *Id.* Counsel to the Maloney campaign informed Crystal Run that it will "disgorge the requested sum by making the check payable to the U.S. Treasury, pending further review by the Commission." *Id.* at 16 n.43. Based on FEC records, Respondents' representation regarding the other recipient committees appears accurate. *See* Friends of Nan Hayworth, FEC.gov, https://www.fec.gov/data/committee/C00466490/ (last visited Dec. 9, 2019) (indicating that committee was last active in 2016 election cycle); Friends of Julian Schreibman, FEC.gov, https://www.fec.gov/data/committee/C00513739/ (last visited Dec. 9, 2019) (indicating that committee was last active in 2014 election cycle); Will Yandik for Congress, FEC.gov, https://www.fec.gov/data/committee/C00603431/ (last visited Dec. 9, 2019) (indicating that committee was last active in 2016 election cycle).

[20] 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i).

regulations includes partnerships, corporations, and other organizations, including LLPs,[21] and under Commission regulations, contributions from a partnership shall be attributed to the partnership and to each partner "in direct proportion to his or her share of the partnership profits."[22] The Commission's regulations include illustrations of activities that constitute making a contribution in the name of another:

> (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
>
> (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.[23]

The Act prescribes additional monetary penalties for violations that are knowing and willful.[24] 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."[25] This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.[26] Instead, it is sufficient to demonstrate that a respondent "acted voluntarily and was

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[21] *See* 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10; Advisory Op. 2009-02 (True Patriot Network) at 3.

[22] 11 C.F.R. § 110.1(e)(1), (g)(2). Alternatively, a partnership may select a different method for determining the proportion as long as there is a corresponding adjustment to the profits of the partners to whom the contribution is attributed. *Id.* § 110.1(e)(2). Crystal Run made no such adjustments.

[23] 11 C.F.R. § 110.4(b)(2)(i), (ii).

[24] 52 U.S.C. § 30109(a)(5)(B), (d).

[25] 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

[26] *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, the government need show only that defendant acted with knowledge that the conduct was unlawful, not knowledge of the specific statutory provision violated)).

aware that his conduct was unlawful."[27] This may be shown by circumstantial evidence from which the respondents' unlawful intent reasonably may be inferred.[28] For example, a person's awareness that an action is prohibited may be inferred from "the elaborate scheme for disguising . . . political contributions."[29] The Commission has found violations involving reimbursement schemes to be knowing and willful when respondents falsified documents, took active steps to conceal illegal activities, kept multiple sets of financial records, or were deemed to be in possession of information warning that their conduct was illegal.[30]

Teitelbaum claims that, at the relevant times, he did not know that reimbursing federal contributions was illegal.[31] In addition, the information does not indicate that Teitelbaum tried to conceal the reimbursements while the practice was ongoing. Crystal Run's financial records show the relevant payments to partners as reimbursements for political contributions,[32] similar to other legitimate reimbursed expenses.[33]

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[27] *Id*. (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 108-36 (D.P.R. 2009), *United States v. Feiger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

[28] *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 contribution 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.

[29] *Hopkins*, 916 F.2d. at 214-15. 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)).

[30] *See* MUR 6234 (Cenac) (use of cashier's checks to hide identify of contributor); MUR 7027 (MV Transportation, Inc., *et al*.) (reimbursements coded as bonuses that were hidden from the company's board); MUR 6465 (The Fiesta Bowl, Inc.) (key witnesses were purposefully excluded from an internal investigation into reimbursement practices); MUR 5818 (Feiger, Feiger, Kenney, Johnson and Giroux, P.C.) (reimbursements described as bonuses for civic-minded employees).

[31] Teitelbaum Response at 1.

[32] *See* Stout Risius Ross, LLC, *supra* note 8, at 10, 13, 18.

[33] *Id.*

However, some of the evidence suggests that Teitelbaum might have been aware that the reimbursement practice was improper. For example, Teitelbaum's September 2015 email concerning a fundraiser for Maloney at Teitelbaum's home states, "partners need to contribute out of their own funds for this event."[34] Further, the invitation to that fundraiser included a disclaimer that asked contributors to confirm: "The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution."[35] These statements are seemingly inconsistent with Crystal Run's well-established practice of reimbursing federal contributions.

With respect to the September 2015 email, Teitelbaum explains that he determined that using partnership funds for the Maloney fundraiser was not warranted and would demonstrate "frugality."[36] Further, his direction to his partners did not reflect "legal judgment or analysis" but "his business assessment."[37] With respect to the invitation, Teitelbaum admits to seeing it before it was sent, but he did not recall reading the "boilerplate language" on the last page of the three-page invitation.[38] He maintains that he did not know that reimbursing federal contributions was illegal until early 2018.[39]

Despite some information suggesting that Teitelbaum may have known or suspected that reimbursing federal contribution was illegal, but proceeded anyway, the Commission has

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34 Email from Hal Teitelbaum to Michelle Koury & Lynn Haskin (Sept. 28, 2015, 12:11 PM), CR-FEC1-0004478.

35 Invitation from Hal & Jennifer Teitelbaum, Reception in Support of Representative Sean Patrick Maloney (NY-18) (Nov. 20, 2015), CR-FEC1-0003811.

36 Teitelbaum Submission at 2.

37 *Id.*

38 *Id.*

39 *Id.* at 1, 3.

determined not to make a finding on a knowing and willful basis. In the *sua sponte* context, the Commission may "[r]efrain from making a formal finding that a violation was knowing and willful, even where the available information would otherwise support such a finding," as a matter of policy,[40] particularly when a respondent has made a full *sua sponte* submission, cooperated extensively, brought substantial information to the attention of the Commission, and voluntarily incorporated significant remedial and compliance measures.[41] Here, Teitelbaum disclosed the violations, cooperated in completing the Submission, provided a significant and complete documentary record, and implemented the necessary remedial and compliance measures.[42] Further, the Commission would have to conduct a more thorough investigation to make a fully informed finding, which, under these circumstances, does not appear to be an efficient use of its resources.

Nonetheless, the Commission has pursued respondents, like Teitelbaum, who carried out significant roles in the reimbursement scheme, and allowed their names to be used to carry out many of the reimbursement schemes.[43] Further, the activity was widespread and long-lasting, and there is some information indicating that Teitelbaum may have known it was illegal. And while there are two factors that might counsel against proceeding against Teitelbaum — the

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[40] *Policy Regarding Self-Reporting of Campaign Finance Violations*, 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

[41] Factual & Legal Analysis at 13-14, MUR 6889 (Nat'l Air Transp. Ass'n) (Oct. 31, 2014).

[42] *See, e.g., id.* at 14 (refraining from making knowing and willful finding where respondent group "not only made a full *sua sponte* submission, but . . . cooperated extensively, brought substantial information to the attention of the Commission . . . and . . . voluntarily incorporated significant remedial and compliance measures in their practices").

[43] *See, e.g.*, MUR 7221 (James Laurita) (finding RTB for executive who directed contribution reimbursement scheme); MUR 6761 (Teresa Wheatley) (finding RTB for administrative assistant who personally directed transfers to her personal bank account); MUR 7027 (R. Carter Pate) (finding RTB for CEO who attempted to disguise reimbursements and hid information from the Board of Directors regarding reimbursement scheme).

relatively modest amount still within the statute of limitations[44] and his cooperation in this matter — his conduct was serious. Accordingly, the Commission finds reason to believe that Teitelbaum violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1).

[44] The amount still within the statute of limitation for Teitelbaum is $8,100.