



FEDERAL ELECTION COMMISSION
 Washington, DC 20463

February 16, 2021

Ross A. Nabatoff
 1440 G Street NW
 Washington, DC 20005
 ross.ranlaw@gmail.com

RE: MUR 7878
 Eric Barbanel
 Zewditu Bekele-Arcuri
 Rosa Cirillo
 Robert Dinsmore
 Wael Fakhoury
 William Gotsis
 Lezode Kipoliongo
 Florence Lazaroff
 Michael Miller
 Jonathan Nassar
 Laura Nicoll
 Manuel Perry
 Emmanuel Schenkman
 Gurvinder Sethi
 Sandeep Singh

Dear Mr. Nabatoff:

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 clients, Drs. Eric Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael Fakhoury, William Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep Singh, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Your clients joined in that submission on March 29, 2019.

After reviewing the submission, on January 28, 2021, the Commission voted to dismiss the allegations as they pertain to your clients. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

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You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Jin Lee".

Jin Lee

Acting Assistant General Counsel

Enclosures:

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Eric Barbanel **MUR: 7878**
 Zewditu Bekele-Arcuri
 Rosa Cirillo
 Robert Dinsmore
 Wael Fakhoury
 William Gotsis
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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 The seventeen physician partners who served as conduits for the contributions later joined in the Submission, including Eric Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael Fakhoury, William Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael

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”).

Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep Singh (collectively, the “physician partners”).²

Records produced by Crystal Run and disclosure reports filed with the Commission indicate that between 2010 and 2016, the physician partners were reimbursed by Crystal Run for one contribution totaling \$500. Accordingly, the Commission dismisses the physician partners.

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 The physician partners are physicians who are also partners at Crystal Run.⁶

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

² See Eric Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael Fakhoury, William Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep Singh Supplemental *Sua Sponte* Submission (July 30, 2019) (“Conduit Submission”).

³ First Supp. Submission at 1.

⁴ *Id.*

⁵ *Id.*

⁶ See Conduit Submission (July 30, 2019).

1 either Teitelbaum or Koury as executives of the partnership.⁷ Conduits were asked to provide
 2 receipts of contributions to Crystal Run in order to be reimbursed by the partnership,⁸ and
 3 Crystal Run made these reimbursements by increasing the conduit-doctor's income allocation
 4 from the partnership, plus a "gross up" to cover any additional taxes owed.⁹

5 In 2010, Crystal Run began sporadically reimbursing its doctors' contributions to *federal*
 6 political candidates that partnership management (specifically, Teitelbaum and Koury)
 7 determined to be beneficial to Crystal Run.¹⁰ According to the Respondents, Crystal Run and its
 8 partners generally presumed that reimbursements for federal contributions were permissible
 9 because under New York law, partnership contributions that exceed \$2,500 are attributed to one
 10 or more individual partners who are then deemed the real contributors.¹¹ None of the non-
 11 executive conduit physicians had contributed to political campaigns extensively in the past, and

⁷ 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.

⁸ *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.").

⁹ *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).

¹⁰ First Supp. Submission at 3.

¹¹ *See* First Supp. Submission at 2-3 (citing N.Y. Elec. Law § 14-120); *see also* Conduit Submission at 2 (regarding Bekele-Arcuri, who "believed the contribution was proper when she made it"); *id.* at 3 (regarding Cirillo, who recalled making only one prior political contribution and who "did not believe the contribution was improper when she contributed"); *id.* at 5 (regarding Lazaroff, who "believed the contribution was proper"); *id.* at 9 (regarding Singh, who "believed that the contribution was proper when he made it").

1 none of them, except one,¹² suspected the reimbursements were illegal until long after the
 2 contributions had been made.¹³

3 Crystal Run's practice of reimbursing partners' federal contributions became routine by
 4 2012.¹⁴ Between June 22, 2012, and September 6, 2016, Crystal Run reimbursed thirty-six
 5 contributions totaling \$44,805 made by seventeen doctors.¹⁵ Most of the contributions Crystal
 6 Run reimbursed to doctors other than Teitelbaum or Koury were for the cost of attending a
 7 fundraiser Teitelbaum hosted for Sean Patrick Maloney for Congress in 2015, for which he
 8 solicited contributions from the conduit physicians.¹⁶ Three physicians stated that they would
 9 not have made contributions had Teitelbaum not asked them to do so, or if they had not been
 10 reimbursed.¹⁷ The chart below details all the federal contributions Crystal Run reimbursed:¹⁸

¹² See Conduit Submission at 2 (containing Barbanel's statement that he had reviewed Maloney's campaign website and seen mention of the prohibition on reimbursing contributions, but had never discussed his concerns with others regarding Crystal Run's practices).

¹³ See, e.g., Conduit Submission at 2, 4-5, 8 (regarding Bekele-Arcuri, who "had not contributed to any local, state, or federal candidate for political office until she joined Crystal Run" and "believed the contribution was proper when she made it"; Gotsis, who "does not believe he contributed to any political candidate until he joined Crystal Run" and "did not think the contribution was improper"; and Perry, who "has no political experience and has never worked for any political campaigns" and who "learned the contributions were not done with the proper methodology" at a meeting in May 2018).

¹⁴ 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.

¹⁵ *Id.* at 8-9. Of the total \$46,500 reimbursed between 2010 and 2016, \$25,800 remains within the statute of limitations.

¹⁶ See Invitation from Hal & Jennifer Teitelbaum, Reception in Support of Representative Sean Patrick Maloney (NY-18) (Nov. 20, 2015), CR-FEC1-0003811 (noting "Host - \$2,700[.] Co-Host - \$1,000[.] Attend - \$500[.]").

¹⁷ Barbanel and Cirillo stated that they would not have given without Teitelbaum's request; Barbanel and Miller stated that they would not have given had they not been reimbursed. Conduit Submission at 2-3, 6.

¹⁸ First Supp. Submission at 8-9.

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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
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

1 According to the Submission, Crystal Run learned reimbursing federal campaign
 2 contributions was illegal in December 2017.¹⁹ In an unrelated civil action, plaintiffs alleged that
 3 Crystal Run had made hundreds of thousands of dollars in campaign contributions to New York
 4 Governor Andrew Cuomo without consulting the physicians, and that these contributions were
 5 illegal.²⁰

6 Based upon concerns raised by the state court action, Teitelbaum authorized Crystal Run
 7 to hire the law firm of Kelley Drye, which retained forensic accounting firm Stout Risius Ross,
 8 LLC, to conduct an internal review of Crystal Run's accounts between 2010 and 2017.²¹

9 According to the Submission, it was during that review that Crystal Run learned that its practice
 10 of reimbursing federal political contributions was illegal.²² As a result, Crystal Run informed
 11 two recipients of reimbursed contributions, Sean Patrick Maloney for Congress and the

¹⁹ *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. Conduit Submission.

²⁰ 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>.

²¹ First Supp. Submission at 5.

²² *Id.*

American Medical Group PAC, of the improper reimbursements and requested refunds of the associated contributions.²³

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.²⁴ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and other organizations, including LLPs,²⁵ 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.”²⁶ 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

²³ *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 Schreiber, 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).

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

²⁵ *See* 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10; Advisory Op. 2009-02 (True Patriot Network) at 3.

²⁶ 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.

- (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.²⁷

The Act prescribes additional monetary penalties for violations that are knowing and willful.²⁸ 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.”²⁹ This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.³⁰ Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.”³¹ This may be shown by circumstantial evidence from which the respondents’ unlawful intent reasonably may be inferred.³² For example, a person’s awareness that an action is prohibited may be inferred from “the elaborate scheme for disguising . . . political contributions.”³³ The Commission has found violations involving reimbursement schemes to be knowing and willful when respondents falsified documents, took

²⁷ 11 C.F.R. § 110.4(b)(2)(i), (ii).

²⁸ 52 U.S.C. § 30109(a)(5)(B), (d).

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

³⁰ *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)).

³¹ *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)).

³² *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.

³³ *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)).

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.³⁴

The physician partners have admitted to permitting their names to be used to make contributions in the name of another. However, the Commission does not typically pursue lower-level employees who serve as conduits in reimbursement schemes and who did not play a significant role in carrying out the conduit scheme.³⁵ The physician partners acknowledge that Teitelbaum asked them to make contributions to various federal candidates and committees and that they were reimbursed for these contributions, thereby permitting their names to be used in connection with contributions made by their partnership, Crystal Run.³⁶ According to their Submission, the physician partners were simply reimbursed for their contributions, and did not suggest the reimbursement or otherwise participate in the creation or perpetuation of the reimbursement practice.³⁷ Bekele-Arcuri, Gotsis, Nasser, and Nicoll were in fact unaware that they would be reimbursed prior to making their contributions, or that they had been reimbursed

³⁴ 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).

³⁵ See, e.g., First Gen. Counsel's Rpt. at 5, 13 & Notification to Babineau, *et al.*, MUR 7472 (Barletta, *et al.*) (taking no action against lower-earning employees and their spouses who served as conduits); First Gen. Counsel's Rpt. at 29-30, 39 & Notification to Chambers, *et al.*, MUR 6889 (taking no action against the conduits who were reimbursed by corporate funds for contributions to SSF); First Gen. Counsel's Rpt. at 8 &, e.g., Notification to Detloff, MUR 6623 (William A. Bennett) (taking no action against lower-level conduit employees who did not actively participate in the reimbursement scheme); First Gen. Counsel's Rpt. at 20, 27 & Certification (Dec. 13, 2011), MUR 6465 (taking no action against the subordinate employees and employee spouses who were not actively involved in the scheme and were acting under the direction of corporate officers).

³⁶ See, e.g., Conduit Submission at 3 ("[Dr. Cirillo] decided to attend the fundraiser and to contribute \$500. Her decision to contribute was predicated upon the fact that an individual whom she respected asked her to contribute. Dr. Cirillo was informed via email that she would be reimbursed for her contribution . . .").

³⁷ See Conduit Submission.

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- 1 at all.³⁸ Finally, the size of the contributions were relatively small, each in the amount of only
- 2 \$500. Accordingly, with respect to the physician conduits, the Commission dismisses.

³⁸ See *id.* at 2, 4-5, 6-7 (providing statements of Bekele-Arcuri, Gotsis, Nasser, and Nicoll).