

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Black Americans for a Better Future) MUR 7900
 and Chris Marston in his official)
 capacity as treasurer)
)
 Mensah Real Estate Property LLC)
)
 Stephen Cannon)

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

16 (1) Take no further action and close the file as to Mensah Real Estate Property, LLC;
17 (2) Take no further action and close the file as to Stephen Cannon; (3) Transfer the remaining
18 respondent in MUR 7900 – Black Americans for a Better Future and Christopher Marston in his
19 official capacity as treasurer – to the Office of Alternative Dispute Resolution; and (4) Approve
20 the appropriate letters.

II. BACKGROUND

22 Following a referral from the Reports Analysis Division (“RAD”) regarding Black
23 Americans for a Better Future and Chris Marston his official capacity as treasurer (“Committee”),
24 the Commission found reason to believe that Mensah Real Estate Property LLC (“Mensah Real
25 Estate”) and Stephen Cannon (“Cannon”) knowingly and willfully violated 52 U.S.C.
26 § 30102(b)(3) by misappropriating and commingling the funds of the Committee with their own
27 funds.¹ The Commission found that certain wire transfers made from the Committee’s bank
28 account to Mensah Real Estate and Cannon totaling \$57,666.67 were caused by the fraud of the

¹ See Cert., MUR 7900 (BABC) (Apr. 15, 2021).

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1 recipients.² The Commission took no action at that time as to whether the Committee violated
2 52 U.S.C. §§ 30102(c) and 30104(b) by failing to keep complete records and file accurate
3 reports.³

4 The Office of General Counsel (“OGC”) conducted an investigation regarding the
5 unauthorized transfers and commingling of the Committee’s funds. OGC was able to utilize the
6 record created during an extensive criminal investigation conducted by the Alexandria Police
7 Department (“APD”) and the Alexandria Commonwealth Attorney’s Office (“Commonwealth
8 Attorney”). OGC reviewed various bank records and witness statements developed during that
9 criminal proceeding. We also contacted Committee personnel to obtain further information on
10 the underlying events. Unfortunately, despite pursuing several leads, neither our efforts or the
11 earlier criminal investigation could locate Cannon, or any other individuals connected to Mensah
12 Real Estate, who may be located overseas. In light of the overall record, we recommend the
13 Commission close the file with respect to Cannon and Mensah. However, in order to assist the
14 Committee with its compliance efforts, we recommend that the Committee be referred to ADRO.

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² See Factual and Legal Analysis at 2, MUR 7900 (BABF) (Apr. 15, 2021).

³ *Id.*

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6 **IV. ANALYSIS**

7 **A. Mensah Real Estate/Stephen Cannon**

8 The Act states that a committee's funds "shall be segregated from, and may not be

9 commingled with, the personal funds of any individual."⁵³ The Commission found reason to

10 believe that Mensah Real Estate and Cannon knowingly and willfully violated 52 U.S.C.

11 § 30102(b)(3) by commingling the funds of the Committee with their own funds.⁵⁴

12 While the investigation was not successful in identifying and locating those individuals

13 responsible for the email hacks or the fraudulent wire transfers, APD and the Commonwealth

14 Attorney were successful in recovering and returning to the Committee over \$25,000. In

15 addition, the investigation yielded a wealth of information regarding the circumstances of the

16 fraudulent wire transfers and activity in the bank accounts that received the transfers.

⁵³ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

⁵⁴ See Cert., MUR 7900 (BABF) (Apr. 15, 2021).

1 At this stage, we do not believe that pursuing the matter any further is the best use of the
 2 Commission's limited resources. We are not optimistic that any additional investigative efforts
 3 on the part of OGC will aid in identifying or locating the individual(s) responsible for the
 4 fraudulent activity. Accordingly, we recommend that the Commission take no further action as
 5 to Mensah Real Estate and Stephen Cannon and close the file.

6 **B. The Committee**

7 In 2007, the Commission established a safe harbor to benefit committees that file
 8 inaccurate reports because their funds were unknowingly misappropriated by committee
 9 fiduciaries and staff.⁵⁵ The Commission concluded that it would not seek a monetary penalty
 10 from a committee for filing inaccurate reports due to embezzlement if the committee maintained
 11 certain internal controls at the time and took certain steps after discovery.⁵⁶ The Commission
 12 concluded that those internal controls and post-discovery steps "represent the *minimum* efforts a
 13 committee must take to qualify for this safe harbor."⁵⁷ Nonetheless, the Commission will
 14 consider "the presence of some but not all" of the controls as mitigating factors when fashioning
 15 a civil penalty offer even if a committee fails to satisfy the policy's additional requirements.⁵⁸

⁵⁵ See Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("Safe Harbor Policy").

⁵⁶ *Id.*

⁵⁷ *Id.* (emphasis added).

⁵⁸ *Id.* The internal controls identified in the policy include: (1) opening all bank accounts in the name of the committee using its Employer Identification Number; (2) reviewing monthly bank statements for unauthorized transactions and reconciling the statements by someone other than the individual with check-signing authority or who has responsibility for the committee's accounting; (3) requiring two signatures on checks over \$1,000; (4) instituting procedures for handling incoming receipts by someone other than the individuals with accounting or banking authority; and (5) maintaining safeguards for managing a petty cash account. Further, when a committee discovers misappropriation of funds, under the policy the committee must notify the Commission and relevant law enforcement authorities, and promptly amend its reports. *Id.*

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1 Although the fraud resulted from a fraudulent email purporting to come from the
2 Committee's Chairman, the circumstances are similar, in some respects, to an embezzlement
3 matter because if the Committee had exercised more care or utilized more internal controls,
4 including multiple levels of review, it could have avoided the fraud. The Commission has not
5 previously considered a matter involving loss of funds due to outside fraudulent emails, but we
6 believe that it would be appropriate to analogize the fraudulent transfer to an embezzlement
7 matter.

8 The Commission voted to take no action as to the Committee at the RTB stage. The
9 investigation confirmed that the Committee was the victim of fraud, and that it lacked the
10 internal controls needed to prevent such loss. But the Committee did take several remedial
11 measures. It reported the criminal activity to the appropriate authorities and reported to the
12 Commission, on its 2018 April Quarterly Report (“Quarterly Report”), that it had recovered
13 \$32,666.67 from one of the two recipients of the fraudulent wire transfers and had received a
14 judgment for the remaining \$25,000.⁵⁹

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16 Since the time of the fraud, the Committee has implemented a
17 new internal control involving a multi-step verification by the treasurer for wire transfers: the
18 treasurer confirms by phone all written requests for wire transfers made by PAC leaders and

⁵⁹ See Factual and Legal Analysis at 2, MUR 7900 (BABC) (Apr. 15, 2021). In fact, however, based on a review of the financial records, it appears the Committee recovered only \$25,554.58 from the Mensah Real Estate FTB account, and not the \$32,666.67 reflected in its disclosure report.

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1 confirms the wire transfer instructions with the wire transfer recipient prior to initiating the wire
 2 transfer.⁶¹

3 Although the Committee has adopted new controls to prevent the fraudulent transfers, we
 4 believe that it would be consistent with Commission practice to refer the Committee to ADRO.
 5 A referral would allow ADRO to work with the Committee to ensure that it has all the proper
 6 internal controls in place to prevent a future loss. In addition, ADRO could ensure that the
 7 Committee has accurately amended its disclosure reports to explain in greater detail the
 8 circumstances of the loss and to accurately reflect the amount of funds recovered. ADRO could
 9 also pursue other remedies it deems appropriate in these circumstances.

10 **V. RECOMMENDATIONS**

11 1. Take no further action and close the file as to Mensah Real Estate.
 12 2. Take no further action and close the file as to Stephen Cannon.
 13 3. Transfer the remaining respondent in MUR 7900 – Black Americans for a Better
 14 Future and Christopher Marston in his official capacity as treasurer – to the Office
 15 of Alternative Dispute Resolution.
 16 4. Approve the appropriate letters.

18 Lisa J. Stevenson
 19 Acting General Counsel
 20

21 Charles Kitcher
 22 Associate General Counsel
 23 for Enforcement
 24

25 March 23, 2022

26 Date

Peter G. Blumberg

27 Peter G. Blumberg
 28 Acting Deputy Associate General Counsel
 29 for Enforcement
 30

31 ⁶¹

See E-mail to Kimberly Hart, OGC, from Steve Roberts, Committee Counsel (Dec. 13, 2021).

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