



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 14, 2022

Jorge Fernandez

Fort Wayne, IN 46819

RE: MUR 7925

Dear Mr. Fernandez:

On July 13, 2022, the Federal Election Commission reviewed the allegations in your complaint received September 3, 2021, and on the basis of the information provided in the complaint, and information provided by respondents, decided to exercise its prosecutorial discretion to dismiss the allegations as to Jim Banks for Congress, Inc., and Steve Martin, Jr., in his official capacity as treasurer; Thomas W. Kelley; and Kelley Automotive Group, LLC. Accordingly, on July 13, 2022, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. A copy of the General Counsel's Report, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Roy Q. Lockett by 

BY: Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7925

Respondents: Jim Banks for Congress, Inc., and Steve Martin, Jr., in his official capacity as treasurer
 Thomas W. Kelley
 Kelley Automotive Group, LLC

Complaint Receipt Date: September 3, 2021

Response Date: September 24, 2021

EPS Rating:

Alleged Statutory

52 U.S.C. § 30116(a), (f);

Regulatory Violations:

11 C.F.R. §§ 110.1; 110.9

The Complaint alleges that Jim Banks for Congress, Inc., and Steve Martin, Jr., in his official capacity as treasurer (the “Committee”) received excessive contributions from Thomas Kelley in multiple ways. It alleges that Kelley contributed under two different spellings of his name — “Thomas Kelley” and “Tom Kelly” — and through Kelley’s sole proprietorship, Kelley Automotive Group LLC.¹ Specifically, the Complaint alleges that “Kelly” made two \$2,900 contributions under his own name and another two \$2,900 contributions through his LLC, on March 31, 2021, and subsequently made a \$2,500 contribution using the correct spelling of his name “Kelley,” on June 25, 2021.² Accordingly, the Complaint alleges that Kelley made and the Committee knowingly accepted excessive contributions.³

In its Response, the Committee states that the alleged violations were due to clerical and software errors and that the excessive contribution that resulted from these errors was promptly

¹ Compl. at 1 (Sept. 3, 2021). The Complaint states that Indiana state records indicate that Kelley Auto is a sole proprietorship belonging to Thomas Kelley. *Id.*

² See *Id.*, Exs. 1-3 (contribution records).

³ *Id.* at 1.

1 refunded when it came to the Committee's attention.⁴ The Response explains that Kelley made a
2 \$10,000 contribution through Kelley Automotive, LLC to the Banks Victory Fund, a joint
3 fundraising committee, on March 31, 2021, which allocated \$2,900 for the 2022 primary election
4 and \$2,900 for the 2022 general election, with the remainder going to Bank's Leadership PAC,
5 House Conservatives Fund.⁵ In other words, there were only two allocations to the Committee
6 (with Kelley and the LLC attributable to each) whereas the Complaint mistook the memo entries as
7 separate contributions and assumed there were four total contributions that exceeded the
8 contribution limit.⁶ Regarding these contributions, however, the Response states that a clerical error
9 resulted in the misspelling of Kelley's name, which caused the Committee's software to miss the
10 excessive \$2,500 contribution that was made in June under Kelley's correct name.⁷ However, the
11 Complaint states that it refunded Kelley the \$2,500 contribution that exceeded the contribution
12 limits within 15 days after it learned "of the duplicative record and overage."⁸

13 Based on its experience and expertise, the Commission has established an Enforcement
14 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
15 assess whether particular matters warrant further administrative enforcement proceedings. These
16 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
17 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
18 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
19 potential violations and other developments in the law. This matter is rated as low priority for

⁴ Response of Jim Banks for Congress, Inc., and Steve Martin, Jr., in his official capacity as treasurer at 1 (Sept. 24, 2021). Thomas Kelley and Kelley Automotive Group LLC did not respond to the Complaint.

⁵ *Id.*

⁶ *See id.*

⁷ *Id.*

⁸ *Id.* The Response states that the Committee refunded \$2,500 to Kelley on Sept. 24, 2021, which the Response explains was a refund of Kelley's \$2,500 contribution made on June 25, 2021. *Id.* See Jim Banks for Congress, Inc. 2021 October Quarterly Report at 199. <https://docquery.fec.gov/cgi-bin/fecimg/?202110159467479011>.

Commission action after application of these pre-established criteria. Given that low rating, the remedial actions of the respondents, and the low dollar amount involved, we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.⁹ We also recommend that the Commission close the file as to all Respondents and send the appropriate letters.

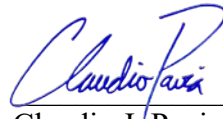
Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel

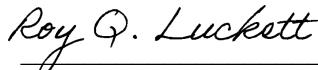
6/30/2022

Date

BY:



Claudio J. Pavia
Deputy Associate General Counsel



Roy Q. Lockett
Acting Assistant General Counsel



Donald E. Campbell
Attorney

⁹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).