

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

December 20, 2021

Federal Election Commission  
Office of Complaints Examination  
& Legal Administration  
Attn: Christal Dennis, Paralegal  
1050 First Street, NE  
Washington, DC 20463

**Re: Matter Under Review 7941**

Dear Mr. Lockett,

This response is submitted by undersigned counsel on behalf of WinRed, Inc. (the “Committee” or “WinRed”) and Ben Ottenhoff, in his capacity as Treasurer (collectively, the “Respondents”), in connection with Matter Under Review 7941.

The Complaint fails to allege any violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), or any Commission regulation (“Regulations”). Instead, the Complainants make only vague allegations regarding a series of voluntary contributions made through WinRed, and inaccurately use terms such as “fraud” and “predatory and criminal . . . [e]lder abuse.” As the facts presented herein demonstrate, all contributions were made by the donor voluntarily, and were collected and transmitted by WinRed in accordance with both applicable law and WinRed policy. Once contacted by the donor, WinRed addressed her concerns to the extent possible and provided additional information on seeking refunds from the committees that received the contributions at issue. Accordingly, for the reasons set forth below, the Commission should find no reason to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”), or any Commission regulation (“Regulations”). The Complaint warrants no further consideration and should be promptly dismissed.

## **I. Factual Background**

WinRed, Inc. is a federal political action committee that serves as a conduit committee, collecting contributions online from individual donors and distributing the contributions, at the donor’s direction, to political entities, such as campaign committees, candidates, and other politically active organizations. WinRed registered with the Commission on January 18, 2019, listing Benjamin Ottenhoff as Treasurer. WinRed filed its most recent amended Statement of Organization on October 16, 2019.

WinRed offers several avenues by which donors may support participating candidates and committees. First, donors may make standard, one-time contributions via the WinRed

**HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK** PLLC

platform (“Contribution”) to candidates and committees of their choosing. While completing the contribution online, donors have the option of designating that contribution as “recurring”, meaning that the contribution will repeat periodically in the future, at an amount and frequency designated by the donor (“Recurring Contributions”). Additionally, donors may choose to make additional contributions to other, similar candidates or committees as WinRed’s website may suggest (“Additional Contributions”). Donors may also make future contributions or pledges to a certain candidate or committee to be processed on a certain later date (“Pledge Contributions”). Additional Contributions, Recurring Contributions, and Pledge Contributions are all processed with donor consent and may be stopped at any time. Additionally, WinRed reminds donors via email when a Recurring Contribution or Pledge Contribution is set to be processed, giving donors an additional opportunity to cancel the contribution at that time.

WinRed’s End User Terms of Use (the “Terms”), to which all users agree prior to using the platform, clearly set forth the process by which a contribution is charged and processed. Specifically, the Terms state that “[b]y entering all of the information prompted on the Platform . . . in the process of making a contribution or placing an order, selecting a Contribution or payment amount, and clicking ‘Contribute,’ ‘Give,’ ‘Donate,’ ‘Purchase,’ ‘Order,’ or the like, [the donor] authorize[s] [WinRed] to charge the method of payment that [the donor] provided.”

The Terms also provide a great deal of information about managing upcoming contributions and requesting refunds.<sup>1</sup> In pertinent part, regarding Recurring Contributions, the Terms provide that recurring payments “will continue . . . until [the donor] cancel[s] the Recurring Contribution according to the instructions in these terms.” Regarding Pledge Contributions, the Terms provide that, by adding a Pledge Contribution, the donor “authorize[s] [WinRed] to charge [the donor’s] selected payment method at a later date designated . . . unless [the donor] cancel[s] the Pledge Contribution.” Such cancellations may be effected via the “subscriptions” page of the donor’s WinRed account or by contacting WinRed Donor Support. Recurring and Pledge Contribution confirmation receipts also contain links to webpages by which donors may view and cancel upcoming contributions.

Finally, regarding refunds, the Terms state that “[WinRed] will use commercially reasonable efforts to accommodate requests for refunds in many situations, but all contributions made on the Platform are final, and . . . WinRed is under [no] obligation to issue a refund unless required by law.” The *Terms* further state that “[o]nce a contribution has been processed, [WinRed] is not obligated to refund the Contribution unless required by law.” This is due to WinRed’s status as a conduit committee, whereby the funds contributed are distributed to recipient committees, pursuant to each donor’s designation, almost immediately after the funds leave the donor’s possession. In short, after that brief window of time, WinRed neither possesses, nor has access to, the funds the donor has contributed. After that time, the Terms state that WinRed “will use commercially reasonable efforts to connect [the donor], as the contributor of the Contribution, with the ultimate recipient of the Contribution, to allow [the donor] to request a refund directly.”

---

<sup>1</sup> The Terms are located at <https://winred.com/terms/donor-terms/>.

**HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC**

Katherine “Kaye” McMartin is an individual donor that made multiple contributions to federal candidates and committees through WinRed between May 3, 2020 and April 23, 2021. Ms. McMartin made 43 contributions during that time, including 12 standard, one-time Contributions, 24 Recurring Contributions, four Additional Contributions, and three Pledge Contributions. Of the 43 total contributions, six were refunded. To obtain those refunds and cancel her recurring subscriptions, Ms. McMartin contacted WinRed Donor Support by phone on April 27, 2021. As a result, Ms. McMartin’s only active Recurring Contribution at the time was cancelled, and three contributions made within 90-days of Ms. McMartin’s call were refunded. The other three refunds were made on July 5, 2020, as the result of chargeback by Ms. McMartin’s credit card company. WinRed’s records show no other communications between Ms. McMartin and Donor Support prior to the October 17, 2021 submission that forms the basis of this Complaint.

On October 17, 2021, Ms. McMartin’s daughters, Peggy Karstens and Kim Schilling, contacted the Donor Support Center via Ms. McMartin’s email address seeking refunds for all contributions made by Ms. McMartin. WinRed responded on October 18, 2021, and sent a follow-up response on October 19, 2021. Complainants responded on October 19, 2021 with an explicit demand for refunds of previous contributions made by Ms. McMartin totaling \$5,492.99. The Donor Support Center informed Complainants of WinRed’s refund policy and provided them contact information for each recipient committee, encouraging them to contact the committees directly to seek the requested refunds, pursuant to WinRed’s Terms.

## **II. Legal Analysis**

The Act and Regulations permit non-connected political committees to serve as conduits for contributions made by donors and expressly designated for ultimate recipient committees of their choice. 52 U.S.C. §§ 30116a(a)(8), 30102(b)(1) and (2); 11 CFR §§ 110.6, 102.8; *see* Advisory Opinion 2003-23 (WE LEAD). Contributions made through an intermediary are considered contributions from the original donor to the recipient committee and must be reported as such. 52 U.S.C. 30116a(a)(8); 11 CFR § 110.6(a). All earmarked contributions collected by a conduiting committee are subject to applicable limits and source prohibitions under the Act and Regulations, and must be forwarded to the recipient committee(s) within 10 days. 11 CFR §§ 110.1, 102.8. Advisory Opinion 2006-30 (ActBlue). Once received, nothing in federal law obligates a committee to refund an otherwise permissible contribution.

Complainants in this instance carelessly allege that WinRed’s lawful collection, processing and transmission of contributions made by Ms. McMartin in accordance with the Act and Regulations amounted to “elder abuse” and “swindling.” Not only are these claims entirely baseless and without merit, but they fail to allege any violation of federal campaign finance law within the Commission’s jurisdiction. Indeed, that is because none occurred. Each of Ms. McMartin’s 43 contributions was made in accordance with the Act and Regulations, as well as the Terms to which Ms. McMartin agreed by using WinRed’s platform. While Ms. Karstens and Ms. Schilling may not agree with Ms. McMartin’s decisions to make such contributions and might prefer she spend her limited resources in another manner, that does not make the transactions unlawful. Ms. McMartin most certainly visited WinRed’s website, either unilaterally

**HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC**

or in response to individual political committee communications. Once on the website, she completed each step necessary to make a contribution, as explicitly outlined in the Terms, and/or to opt-in to various Recurring Contributions, Additional Contributions, and/or Pledge Contributions, as applicable. Each step of the process was accompanied by requisite disclaimer language and a link to the Terms, giving Ms. McMartin ample notice of the terms applicable to the activities in which she was engaged. Further, the fact that Ms. McMartin continued to make contributions after her initial exchange with Donor Support on April 27, 2021 demonstrates the voluntary and knowing nature of her transactions.

Complainants further take issue with WinRed's failure to issue refunds for the contributions. Again, nothing in the Act or Regulations compels a committee to refund an otherwise permissible contribution. Further, WinRed's determinations regarding refunds of any of Ms. McMartin's contributions were made in accordance with the Terms, which state that "[WinRed] will use commercially reasonable efforts to accommodate requests for refunds in many situations, but all contributions made on the Platform are final, and . . . [WinRed] is under [no] obligation to issue a refund unless required by law." The Terms further state that "[o]nce a contribution has been processed, [WinRed] is not obligated to refund the Contribution unless required by law." The Terms aside, WinRed is no longer in possession of the contributions Ms. McMartin made via WinRed. WinRed acted as a conduit and distributed Ms. McMartin's contributions to the recipient committees, pursuant to Ms. McMartin's designations, nearly immediately once the funds left her possession. Nevertheless, as a good faith gesture, WinRed agreed to refund contributions that were made within 90 days of Ms. McMartin's call to WinRed Donor Support. To the extent that Complainants are now interested in seeking refunds for additional contributions outside of those already refunded by WinRed, they should reach out to the recipient committees directly, as these committees ultimately received the funds, and request refunds directly from them.

**III. Conclusion**

The Complaint should be dismissed because it fails to allege a violation of the Act or Commission regulations. WinRed's activities are, and have always been, conducted in accordance with federal law and Committee policy. Ms. McMartin's contributions were made voluntarily and WinRed addressed her concerns promptly, including issuing refunds that were not legally required. Accordingly, the Complaint fails to provide any basis for the Commission to find reason to believe that any violation of federal law occurred, and we urge the Commission to promptly dismiss the matter without further action.

Sincerely,



Jessica Furst Johnson  
Christine Fort  
Counsel to WinRed, Inc.