

GUARINO & CO.
LAW FIRM, LLC

RECEIVED

By OGC/CELA at 12:20 pm, May 18, 2023

Please direct all mail to our Main Office

Philip L. Guarino, Esq. (NJ Bar)

Direct: 973/272-4147
Fax: 973/528-0635
E-mail: guarinolaw@gmail.com

Main Office

300 Main Street, Suite 552
Madison, NJ 07940
973/348-6008

Of Counsel:**Charles D. Hellman, Esq.**

Direct: 203/722-0297
Fax: 646/417-7220
E-mail: cdh@hellmanlaw.org

Rochelle Park

365 W. Passaic Street, Suite 275
Rochelle Park, NJ 07662

New York

535 Fifth Avenue, 4th Fl.
New York, NY 10017

March 24, 2023

VIA E-MAIL (CELA@fec.gov)

Federal Election Commission
Office of Complaints Examination
& Legal Administration
1050 First Street, NE
Washington, DC 20463

**Re: Complaint Involving King Penna
Matter: MUR 8100**

Dear Sir/Madam:

This firm represents King Penna, to whom the Federal Election Commission (“FEC”) forwarded a complaint filed by the law firm of Azzolini & Benedetti, LLC on behalf of its client, Dr. Rikin Mehta, a former candidate for U.S. Senate (“Complainant”). We recognize that this Response has not been filed with the 15 days afforded Mr. Penna to respond, but hope that nevertheless this brief Response will be considered now that Mr. Penna has retained counsel.

First, we note that the Complaint is not against Mr. Penna—it is against Mr. Hirsh Singh, a candidate for U.S. Senate in 2020. Complainant asserts that Mr. Singh failed to comply with the Federal Election Law by failing to “transparently disclose his debts and expenditures timely to the Federal Election Commission,” and that Mr. Singh—not Mr. Penna—should be held accountable. Complaint at para. 2. Mr. Penna has no knowledge of what Mr. Singh disclosed or did not disclose regarding his campaign expenditures, and hence takes no position as concerns the allegations concerning Mr. Singh. In any event, the alleged failure to disclose campaign expenditures has no bearing upon Mr. Penna, who as will be seen below simply furnished services to Mr. Singh and billed him for those services.

Second, as concerns a possible violation by Mr. Penna of the Federal Election Campaign Act of 1971, as amended (the “Act”), Mr. Penna vehemently denies and disputes any suggestion that he violated the Act. Certainly there is no evidence that there was any knowing violation of the Act.

Complainant essentially contends that Mr. Penna obtained a \$70,000 loan “for the purpose of coordinating campaign expenditures with Mr. Singh in order to further Singh’s campaign.” Complaint at 1. Complainant has produced no evidence of this. Moreover, Mr. Penna denies that this was the purpose of the \$70,000 loan to him from third-parties William and Anna Riker, or that the \$70,000 was spent on campaign expenses. Complainant has produced no evidence whatsoever that this was the purpose of the loan, or that there was any coordination between Mr. Penna and Mr. Singh concerning the use of this money.

Complainant relies on the Complaint filed by the Rikers against Mr. Penna in New Jersey Superior Court to recover their \$70,000 loan, but that litigation supports Mr. Penna’s position that the \$70,000 loan was not a contribution or loan to Mr. Singh’s campaign, and that it was not spent on campaign expenditures or disbursements. In the New Jersey lawsuit, Mr. Penna filed an Answer and Third-Party Complaint against Mr. Singh. *See* Answer, annexed as **Exhibit A**. In the Third-party Complaint against Mr. Singh, Mr. Penna alleges that Mr. Singh owes Mr. Penna’s company \$159,463 pursuant to an Invoice issued by the company to Mr. Singh for design and printing services provided by Mr. Penna’s company in connection with Mr. Singh’s 2020 campaign. *See* Invoice, annexed as **Exhibit B**. Mr. Penna’s company provided and billed for services to Mr. Singh; no part of the \$70,000 loan was used to loan money to Mr. Singh or to contribute to his campaign or to fund campaign expenditures or disbursements, and Complainant has produced no such evidence.

Mr. Penna maintains that the \$70,000 loan from the Rikers was used by his company to pay for printing and other costs incurred by it in connection with the services that ultimately were provided and billed to Mr. Singh. Mr. Penna did not in any way finance Mr. Singh’s campaign or campaign materials by providing services on credit, and Complainant has provided no evidence to the contrary—the services were billed contemporaneously to Mr. Singh. Nor is there any evidence that Mr. Penna disbursed money or paid or incurred expenses to a third-party for an election communication or to benefit Mr. Singh or his campaign, or that there was any coordination between Mr. Penna or his company and Mr. Singh or the Singh campaign relating thereto. Again, Mr. Penna’s company simply provided design and printing services, and Mr. Singh was billed for the services.

In short, Mr. Penna contends that he did not take funds from a third-party (the Rikers) and use them to support Mr. Singh or his campaign, and there is no evidence to the contrary. Mr. Penna maintains that his company was hired by Mr. Singh to provide design and printing services; that his company used the \$70,000 to pay for its normal operating and other costs in providing the services; and that the services ultimately were rendered to Mr. Singh and billed to him contemporaneously. No part of the \$70,000 constituted a loan or contribution to Mr. Singh, and there were no expenses or disbursements paid to third-parties for an election communication rendered or to be rendered by the third-parties, and certainly there is no evidence of any coordination concerning same with Mr. Singh or his campaign.

Finally, we are not sure why Complainant refers to Mr. Penna coordinating campaign related activities, as to our knowledge the Act does not prohibit any person or company from simply coordinating campaign activities. Complainant provided no evidence that any election contribution, be it by way of direct contribution, providing financing, paying expenses, or making disbursements, was made by Mr. Penna or his company, and certainly there is no evidence of any coordination with Mr. Singh or his campaign concerning any such contribution. Likewise, the

litigation referred to by Complainant between Mr. Penna and Mr. Mehta does not constitute or reflect a violation of the Act.

Based upon the foregoing, we respectfully submit that the FEC should find that there is no reason to believe that Mr. Penna engaged in any possible violation of the Act, and that the file therefore should be closed. Again, Mr. Penna takes no position as to any possible violations of the Act by Mr. Singh.

Respectfully submitted,

S/Phil Guarino

PHILIP L. GUARINO, ESQ
(ATTY. NO. 027561982)
 GUARINO & CO. LAW FIRM, LLC
 300 Main Street, Suite 552
 Madison, NJ 07940
 973/858-5574
 Fax: 973/528-0635
 e-mail: guarinolaw@gmail.com
 Attorneys for Defendants and
 Third-Party Plaintiff

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: MORRIS COUNTY
 DOCKET NO. MRS-L-1132-22

CIVIL ACTION

WILLIAM RIKER and ANNA
 RIKER,

Plaintiffs,

v.

KING PENNA and KINGMAKER:
 STRATEGIES, LLC

Defendants.

KINGMAKER STRATEGIES, LLC,

Third-Party Plaintiff,

v.

Third-Party Defendant.

**ANSWER, THIRD-PARTY
 COMPLAINT AND DEMAND
 FOR TRIAL BY JURY**

Defendants King Penna and Kingmaker Strategies, LLC, through the undersigned
 attorneys, by way of Answer to the Complaint state:

1. Deny.
2. Deny.
3. Deny.
4. Deny.
5. Deny.

6. Deny.

7. Admit.

FIRST SEPARATE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Defendant King Penna never personally signed the note or extension and never became liable to plaintiffs.

THIRD SEPARATE DEFENSE

There is no contract with King Penna.

FOURTH SEPARATE DEFENSE

Plaintiffs have breached the implied covenant of good faith and fair dealing that is implied in the promissory note, because they have filed suit knowing that repayment depended upon Hirsh Singh making payment, which he has not done. Plaintiffs' material breach of contract bars their claims.

FIFTH SEPARATE DEFENSE

There has been a novation of contract, whereby Hirsh Singh was substituted as obligor on the note and extension.

SIXTH SEPARATE DEFENSE

Plaintiff is estopped from asserting its claims.

WHEREFORE, defendants demand that the complaint against them be dismissed with prejudice, and that they be awarded costs of suit.

THIRD-PARTY COMPLAINT

Defendant and third-party plaintiff Kingmaker Strategies, Inc., by way of third-party complaint against Hirsh Singh ("Singh"), alleges:

1. Plaintiff has an office at 235 Main Street, Lincoln Park, New Jersey.

2. Defendant Singh has a last known address at [REDACTED] Toms River, New Jersey.

3. Plaintiff performed design and printing services for Singh in connection with Singh's campaign to become a United States Senator.

4. Plaintiff issued Invoice 1001 to Singh, dated July 22, 2020, in the amount of \$159,463 (the "Invoice").

5. Despite demand for payment, Singh has failed to fully pay the Invoice.

**COUNT ONE
(Breach of Contract)**

6. Third-Party Plaintiff repeats and realleges all prior allegations as if fully set forth at length herein.

7. Singh agreed that he would pay third-party plaintiff for its services.

8. Singh has failed to fully pay the Invoice, despite demand for payment.

9. Third-party plaintiff has been damaged by Singh's failure to fully pay the Invoice.

**COUNT TWO
(Unjust Enrichment)**

10. Third-Party Plaintiff repeats and realleges all prior allegations as if fully set forth at length herein.

11. As a result of Singh's wrongful failure to pay for services provided him by third-party plaintiff, Singh has been unjustly enriched.

WHEREFORE, Third-Party Plaintiff Kingmaker Strategies, LLC demands judgment against Singh for compensatory damages, plus costs of suit and pre- and post-judgment interest.

BY: S/Philip L. Guarino

GUARINO & CO. LAW FIRM, LLC
300 Main Street, Suite 552
Madison, NJ 07940
973/272-4147
e-mail: guarinolaw@gmail.com
Counsel for Defendants and Third-Party Plaintiff

DEMAND FOR TRIAL BY JURY

Defendants and Third-Party Plaintiff demand a trial by jury of all issues so triable.

BY: S/Philip L. Guarino

GUARINO & CO. LAW FIRM, LLC
300 Main Street, Suite 552
Madison, NJ 07940
973/272-4147
e-mail: guarinolaw@gmail.com
Counsel for Defendants and Third-Party Plaintiff

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, please be advised that Philip L. Guarino, Esq. is hereby designated as trial counsel on behalf of defendants and third-party plaintiff in the above-captioned matter.

BY: S/Philip L. Guarino

GUARINO & CO. LAW FIRM, LLC
300 Main Street, Suite 552
Madison, NJ 07940
973/272-4147
e-mail: guarinolaw@gmail.com
Counsel for Defendants and Third-Party Plaintiff

CERTIFICATION

The undersigned certifies that, to the best of his knowledge:

1. The matter in controversy is not the subject of any other action or proceeding in any Court, or of a pending arbitration proceeding.
2. No other action or arbitration proceeding is contemplated concerning the matter in controversy.
3. There are no other parties who should be joined in this action.

BY: S/Philip L. Guarino

GUARINO & CO. LAW FIRM, LLC
300 Main Street, Suite 552
Madison, NJ 07940
973/272-4147
e-mail: guarinolaw@gmail.com
Counsel for Defendant and Third-Party Plaintiff

Kingmaker Strategies LLC
 235 Main St
 Lincoln Park, NJ 07035

INVOICE

Date: July 22, 2020
 Invoice #: 1001

Singh for Senate
 P.O. Box 407
 Linwood, NJ 08221

Description	Job	Payment Terms	Due Date
		Due on receipt	July 22, 2020

Qty	Description	Unit Price	Line Total
2000	Design, Print # 10 Envelopes		
2000	Design, Print # 9 Envelopes		
2000	Design, Print, fold, Insert Reply forms		
2000	Design, Print, fold, Insert Tri-folds		
2000	Design, Print, fold, Insert Letter Heads		
2000	Print, Fold, Insert Sample ballots		
34,252	Class Addressing # 10 Envelopes and Mail Merging		
34,252	Bulk Rate Postage		
	Delivery to Mail House		
	Data for Mailing		
	Delivery to Post Office		
			\$159,463
Subtotal			159,463
Sales Tax			
Total			\$159,463

Please make all checks payable to:
Kingmaker Strategies LLC,
 235 Main St
 Lincoln Park, NJ 07035

Thank you for your business!



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

AR/MUR/RR/P-MUR# MUR 8100

Name of Counsel: Philip L. Guarino, Esq.

Firm: Guarino & Co Law Firm, LLC

Address: 300 Main St., Suite 552
Madison, NJ 07940

Office#: 973/272-4147 Fax#: 973/528-0635

Mobile#: [REDACTED]

E-mail: guarinolaw@gmail.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

King Penna!

Date

(Signature - Respondent/Agent/Treasurer)

Title

(Name - Please Print)

King Penna

RESPONDENT:

King Penna

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address:
(Please Print)

Clifton, NJ 07014

Home#: _____ Mobile#: [REDACTED]

Office#: _____ Fax#: _____

E-mail: King@Kingmakershakes.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

Rev. 2018