BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Beaulieu of America, Inc.;	)	MUR 4879
Carl M. Bouckaert	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was referred to the Commission by the U.S. Department of Justice after Beaulieu of America, Inc. ("Beaulieu") entered into a plea agreement and agreed to submit to the Commission's jurisdiction. In its plea agreement, Beaulieu also agreed to enter into a conciliation agreement with the Commission and pay a $200,000 civil penalty with respect to the activity at issue in the plea agreement. A check from Beaulieu in the amount of $200,000 was forwarded to the Commission by the Department of Justice at the time it referred this matter to the Commission.

On February 2, 1999, the Commission found reason to believe that Beaulieu and Carl M. Bouckaert, Beaulieu's Chief Executive Officer, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f. Because Mr. Bouckaert was not a party to the plea agreement and was not referred by the Department of Justice, there was very little information specific to him contained in the referral. However, in view of the available information that Mr. Bouckaert had been a co-chairman of the fundraising dinner, and that under the terms of the corporation's plea agreement he agreed to appear on behalf of the corporation at sentencing and also agreed to perform a substantial amount of the

community service, the Commission found reason to believe that Mr. Bouckaert knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f. [1]

On February 16, 1999, notification of the Commission's findings and a proposed conciliation agreement were mailed to counsel for the respondents. After requesting an extension of time to respond to the Commission's findings and meeting with staff of this Office, on April 5, 1999, the respondents submitted their response to the Commission's finding and a counteroffer to the Commission's proposed conciliation agreement (Attachment 1).

II. FACTUAL AND LEGAL ANALYSIS

In response to the Commission's findings, counsel argues that no further action should be taken against Mr. Bouckaert because the knowing and willful findings made against him are not supported by the record and are contrary to fact. Counsel states that "Mr. Bouckaert's personal conduct was not detailed in the plea agreement or information since he was not charged by the Department of Justice with any violation of

[1] As a result of the discussion during Executive Session on February 2, 1999, this Office sent a memorandum to the Audit Division stating that the Alexander for President Committee may owe a repayment to the United States Treasury for receiving funds in excess of its entitlement since 34 of the 36 contributions at issue were matched for public funds. 11 C.F.R. § 9038.2(b)(1)(iii). This Office requested that the Audit Division re-examine the Alexander for President's Committee's Statement of Net Outstanding Campaign Obligations and analyze the contributions from Beaulieu in order to assist the Commission in determining if the Alexander for President Committee should be required to make an additional repayment to the United States Treasury. As of this writing, the Office of General Counsel's Public Financing Ethics and Special Projects Section is analyzing whether the Commission should seek an additional repayment from the Alexander for President Committee. In the event it is determined that a repayment is required, such repayment would be handled separately from this matter in the repayment process. See Reagan Bush Committee v. Federal Election Commission, 525 F. Supp. 1330, 1337 (D.D.C 1981)("repayment determinations which includes the audit process and the procedure for enforcing violations of [Presidential Election Campaign Fund Act] and [Federal Election Campaign Act] are treated as two different functions under the statutory scheme and by the FEC in practice"); accord Kennedy for President v. Federal Election Commission, 734 F.2d 1558, 1560 n.1 (D.C. Cir. 1984).

federal law." Counsel contends that a review of the company's records has disclosed no indication that Mr. Bouckaert authorized any of the reimbursements that occurred. Counsel argues that there is further proof that the reimbursements were not subject to central direction or control by Mr. Bouckaert in that each of the several corporate officers who encouraged or authorized reimbursements did so in different ways.[2] The response asserts that the "company's records reflect that these managers did not act in concert nor take direction from a single source." Counsel also emphasizes that some contributions to the fundraising dinner from corporate employees were never reimbursed or submitted to anyone for reimbursement, and that some corporate officials solicited for contributions did not make any contributions whatsoever.

The response continues on to argue that the "Commission should not confuse Mr. Bouckaert's willingness to accept responsibility on behalf of the corporation with an admission of personal liability for a violation of the Federal Election Campaign Act." The response explains that Mr. Bouckaert accepted responsibility for the corporation's actions because he is the founder and CEO of the company, and that his presence at the sentencing was consistent with U.S. Sentencing Guideline 8C2.5(g), which encourages a CEO to take the lead in demonstrating that a corporation should be remorseful and accept responsibility for its actions. In addition, the response argues that this matter is similar to closed MUR 4772 (Sun-Land Products of California) which also involved a plea agreement and was referred by the Department of Justice. In that

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[2] To support the assertion that each of the managers did not take direction from a single source, the response states that two managers wrote checks from their personal accounts to reimburse employees. Insofar as the corporation has taken responsibility for all the reimbursements, and has embarked upon a

matter, the corporation's Board of Directors approved stipends to be paid to the non-management directors in exchange for political contributions, and no corporate officers were charged by the Department of Justice or pursued as respondents by the Commission.

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campaign finance compliance program to ensure that this type of activity does not occur again, this Office makes no recommendation as to these individuals.

It is also the recommendation of this Office that the Commission accept the attached counteroffer from Beaulieu, and close the file in this matter.

III. RECOMMENDATIONS

1. Take no further action against Carl M. Bouckaert.
2. Approve the counteroffer of Beaulieu of America, Inc.
3. Close the file.

4. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

5/6/99
Date

BY: Lois G. Lerner
Associate General Counsel

Attachment:
1-- Response to RTB and counteroffer

99.04.30.2631