



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of)
)
Giordano for United States Senate) **Administrative Fine # 560**
and Thomas Ariola, as Treasurer)

**STATEMENT OF REASONS
COMMISSIONERS MASON, SMITH, AND TONER**

This matter involves the failure of Giordano for United States Senate and Thomas Ariola, as treasurer, (hereinafter "Respondents" or "Committee") to file a 2001 Year End Report. We write to explain our votes rejecting the Office of Administrative Review's recommendation to make a final determination that the Committee violated the Act and impose a fine based on the schedule of penalties at 11 C.F.R. §111.43.

FACTS

The Mid Year Report of Receipts and Disbursements covers the reporting period from January 1st through June 30th and must be filed no later than July 31st. 2 U.S.C. § 434(a). Giordano for United States Senate failed to file its 2001 Mid Year Report. On November 2, 2001, the Commission found Reason to Believe that Giordano for United States Senate and Thomas Ariola, as Treasurer, violated the Act. See Administrative Fine #495. The Reports Analysis Division notified the Committee of the Commission's finding and civil penalty.

The Commission received a challenge to Administrative Fine #495 from Respondents' counsel. Counsel stated that the FBI had served search warrants at two properties in Waterbury, Connecticut for the documents, records and computer equipment concerning Giordano's 2000 Senate campaign. Counsel submitted copies of two warrants from the United States District Court of Connecticut issued at the request of the FBI on July 22, 2001 that were effective for 10 days until approximately July 31, 2001. The warrants specified, among other things, bank records, correspondence, copies of all reports filed with the Commission and drafts of such reports and documents used in the preparation of the reports, and correspondence between the candidate and the Commission. Thus the Respondents were left without the records necessary to file the report.

Finding that this evidence demonstrated that the Committee was under "extraordinary circumstances" as set forth in 11 C.F.R. § 111.35 and thus was unable to prepare and file a 2001 Mid Year Report between July 22nd and July 31st, the Commission's Office of Administrative Review (OAR) recommended that the Commission make a final determination that the Respondents violated 2 U.S.C. §434 (a) but waive the civil penalty pursuant to 11 C.F.R. § 111.37(d). The Commission approved unanimously on January 14, 2003.

The Committee also failed to file its 2001 Year End Report. The Year End Report of Receipts and Disbursements covers the reporting period from July 1st through December 31st and must be filed no later than January 31st. 2 U.S.C. § 434(a). On June 14, 2002, the Commission found Reason to Believe that the Committee, and Mr. Ariola, as Treasurer, violated the Act. The Reports Analysis Division notified the Committee of the Commission's second finding and civil penalty.

The Commission received a challenge to Administrative Fine #560 from the Committee's counsel. Counsel stated that the extraordinary circumstances continued to exist because the Committee's records were still in the control of the Department of Justice and the FBI, leaving Mr. Ariola, the treasurer, still unable to file reports with the FEC. Counsel submitted a copy of a third search warrant dated July 25, 2001, and an FBI Receipt that listed items that were seized from the properties, which include "misc[ellaneous] records related to Giordano for US Senate." Counsel also submitted a copy of a letter dated July 30, 2001 written on behalf of Mr. Ariola in which counsel requested the return of original or copies of certain documents from the FBI.

Based on this evidence, OAR concluded that the Committee would not have been able to report Year End activity from July 1 through July 26, 2001 due to the seizure of records and documentation. However, OAR also concluded that:

Because it does not appear that any additional records were seized and it does not appear that any records for activity covering the rest of the Year End reporting period (from July 27 through December 31) were seized, the Reviewing Officer believes that the respondents would have been able to prepare and timely file the Year End Report disclosing activity for the remainder of the reporting period. Rather than not filing any report at all, the respondents could have filed the report disclosing activity for most of the Year End reporting period.

OAR recommended that the Commission find that the Committee violated § 434(a) and assess a \$8,000 penalty. On January 14, 2003, the Commission failed to approve the recommendation by a vote of 3-3.¹ Because there were not four votes in favor of going forward with the case or dismissing the case, the Commission voted unanimously to take no further action and close the file.

ANALYSIS

¹ Chair Weintraub, Commissioners Thomas and McDonald voted in favor of the recommendation; Vice Chairman Smith, Commissioners Mason and Toner objected.

Under 11 C.F.R. § 111.35(b)(iii), a respondent may challenge the Administrative Fine Reason to Believe finding and/or civil penalty by showing “the existence of extraordinary circumstances that were beyond the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner.” The Commission has found “extraordinary circumstances” when committees were deprived of the records needed to complete reports due to criminal activity or acts of God. *See e.g.*, AF #255 Bryndan Wright for Congress Committee (former staff members unlawfully converted and/or misappropriated the records); AF #325 San Bernardino County Republican Central Committee (flood of headquarters resulted in the loss of records and prevented timely filing). We believe that the FBI seizure of documents for an investigation lies within the definition of “extraordinary circumstances” because the Committee did not have any control over when and for how long the records were seized.

OAR contends that the Committee should have asked for its records back when it requested the return of certain documents from the FBI and DOJ in a letter dated July 30, 2001. If this was not possible, OAR contends that the Committee should have delineated why it was unable to retrieve the Committee’s campaign records from the FBI. Given the fact that a third search warrant was issued on July 25, 2001, it is fair to presume that the Committee was still under investigation for issues surrounding Giordano’s 2000 U.S. Senate Campaign and likely that the FBI and DOJ would not release the documents. It may have been better if the Committee had requested the return of the documents with greater specificity, but the failure to do so does not change the fact that the records were not under the Committee’s control, having previously been seized by the FBI.

Additionally, OAR took the position that the Committee should have at least filed a partial report covering the period from July 27 through December 31, 2001. As mentioned above, because the Committee complied with a criminal subpoena, the Committee did not have the records – on paper or on a computer - to file a Mid Year Report. The Committee’s records for the Year End expenditures and disbursements depended on much the same information, i.e., cumulated amounts during the year. Thus any partial year-end report may have contained substantial inaccuracies or omissions, so as to defeat the purpose of reporting.

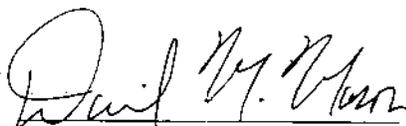
In sum, while the Committee might have been more specific in its request that the government return its files to it, we do not believe that the regulations require that the Committee take such steps, nor that liability should arise because the Committee did not take such action. We also believe that the seizure of a political committee’s financial and accounting records by criminal authorities constitutes “extraordinary circumstances” under 11 C.F.R. 111.35, that such circumstances are beyond the control of the committee, and that in this case they lasted beyond forty-eight hours.

For the foregoing reasons, we find that Respondents met the “extraordinary circumstances” defense provided by 11 C.F.R. 111.35, and therefore decline to find that the Committee violated the Act in this matter.

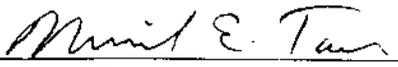
March 13, 2003



Bradley A. Smith
Vice Chairman



David M. Mason
Commissioner



Michael Toner
Commissioner