

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-CV-22643-COOKE/GOODMAN

FEDERAL ELECTION COMMISSION,

Plaintiff,

v.

DAVID RIVERA,

Defendant.

**DEFENDANT DAVID RIVERA'S MOTION FOR
SUMMARY JUDGMENT AND MEMORANDUM OF LAW**

COMES NOW defendant David Rivera, by and through his undersigned counsel, and pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, hereby moves for summary judgement on the single count alleged in the amended complaint. There being no genuine or other material facts requiring trial for its determination, the defendant is hereby entitled to judgment as a matter of law based upon the facts and legal argument as set forth below:

Introduction and Case History

According to the amended complaint in this case the defendant is accused of participating in a scheme with Ana Sol Alliegro and Justin Lamar Sternad to secretly provide more than \$55,000.00 in-kind contributions to the 2012 primary election campaign of Mr. Sternad in Florida's 26th Congressional District. The amended complaint accuses Mr. Rivera of directing Ms. Alliegro to deliver cash to vendors who were providing services to Mr. Sternad's election campaign. The amended complaint further states that the defendant concealed these in-kind contributions by paying vendors in cash and instructing Ms. Alliegro to tell candidate Sternad to falsely state on his

disclosure reports that the funds used to pay the vendors did not originate from Mr. Rivera but, instead, were loans from Mr. Sternad's personal funds.

Both Justin Sternad and Ana Sol Alliegro were arrested and criminally prosecuted in this district for their alleged role in the scheme described in the amended complaint. (See *United States v. Sternad*, case number 13-CR-20108-Altonaga and *United States v. Alliegro*, case number 14-CR-201012-Scola). Although Mr. Rivera was also a subject in this investigation, he was never charged with participating in any criminal scheme.

The original complaint in this cause was filed by the Federal Election Commission on July 14, 2017. On November 22, 2017 the defendant filed his motion to dismiss the complaint for failure to state a cause of action. On September 27, 2018 this Honorable Court entered its order granting the defendant's motion to dismiss, explaining that the facts alleged in the plaintiff's complaint did not support a primary liability on the part of Mr. Rivera because it did not "allege that Rivera secretly made donations without Sternad's knowledge, or that he himself used a false name, or that he himself instructed Sternad to falsify his disclosure forms". (D.E. 31, p. 5).¹

On October 22, 2018 the Federal Election Commission filed a motion to reopen the case and requested leave from the Court to file an amended complaint (D.E. 32). On January 5, 2019 this Honorable Court granted plaintiff's motion seeking leave to file an amended complaint. On January 15, 2019 plaintiff filed its amended complaint (D.E. 41) to which Mr. Rivera again moved to dismiss (D.E. 42).

On April 16, 2019 the Court entertained argument on defendant's motion to dismiss the amended complaint. (D.E. 49). The Court denied defendant's motion to dismissed based solely on

¹ A secondary actor, *i.e.* one who helps or assists another in making a contribution in the name of another, cannot be the basis to support an FEC claim under §30122. *FEC v. Swallow*, 304 F. Supp. 3d 1113 (D. Utah 2018).

the new allegation that Mr. Rivera had instructed Ana Alliegro to tell Sternad to falsely characterize the in-kind donations made to the vendors as loans from the candidate's own funds and not paid by Mr. Rivera (D.E. 49, pps. 23-25, 26-30). The Court summarized on the record that its order denying defendant's motion to dismiss was based upon the alleged fact Mr. Rivera had instructed Ana Alliegro to tell Candidate Sternad not to disclose the true source of the funds used to pay the vendors, but instead to claim that those funds were from loans made by Mr. Sternad to his own campaign.

As will be demonstrated below there is no evidence present in this case establishing that David Rivera personally provided funds to vendors for services rendered to the Sternad campaign, or that he instructed Ana Alliegro to advise candidate Sternad to falsify his financial disclosure forms.

Arguments and Legal Analysis

The amended complaint alleges that David Rivera made payments to vendors who provided in-kind services to the Sternad campaign and "took measures to conceal his involvement and the source of the contributions". The Federal Election Committee has sought to prove that Mr. Rivera "delivered cash to vendors providing services to the committee" in an effort to conceal his identity. No vendor, or any other witness, has established that Mr. Rivera was the source of cash payments delivered to a vendor. Furthermore, even if there was some evidence that Mr. Rivera was the source of the cash paid to a vendor, payment of cash alone is insufficient to establish a violation of 52 U.S.C. §30122. Section 30122 is titled Contributions in Name of Another Prohibited and states:

No person shall make a contribution in the name of another person or knowingly permit his name to be used to affect such contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

This statute does not prohibit making payments to vendors on behalf of a candidate. Any donor who pays a vendor for the benefit of a candidate, whether by credit card, check or cash, is not in violation of the statute provided that these contributions are reported to the candidate and that the candidate discloses such donations on his disclosure form. There is no evidence that Rivera used a false name or that he participated in the falsification of Sternad's disclosure forms. Without evidence of either, there can be no violation of §30122.

This Honorable Court specifically found at the hearing on defendant's motion to dismiss the amended complaint that the allegation raised in the amended complaint stating that Mr. Rivera instructed Alliegro to advise candidate Sternad to falsify his financial disclosure form was the basis of its ruling to permit the amended complaint to stand. (Exhibit C). Unfortunately for plaintiff, there is no admissible evidence which proves that David Rivera instructed Ana Alliegro in such a way.

Arguing for summary judgment on behalf of a defendant based solely upon a plaintiff's failure to provide sufficient evidence to support its claim is usually a difficult proposition. However, in the present case, there is no available evidence to establish Mr. Rivera instructed Ana Alliegro to advise candidate Sternad to falsify his financial disclosure forms. Ms. Alliegro has not provided any admissible evidence regarding this fact. There is no admissible evidence nor any witness which can establish this most essential fact.

Even if there was some evidence in this case to demonstrate Mr. Rivera participated in or assisted in the delivery of cash to vendors for the services they rendered, there is no evidence establishing that Mr. Rivera sought to conceal his identity or cause the candidate to take steps to hide his identity. Mr. Sternad signed and mailed multiple disclosure forms to the FEC, falsely stating that the contributions he received from the vendors were paid by loans from his personal funds. This he did solely upon the direction of Ana Alliegro. Without the testimony of any witness

to specifically place the blame at Mr. Rivera's feet for the falsification of the FEC forms, there is no violation of §30122 and summary judgment should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **August 10, 2020**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and emailed.

/s/ Roy J. Kahn
ROY J. KAHN