

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-CV-22643-COOKE

FEDERAL ELECTION COMMISSION,

Plaintiff,

v.

DAVID RIVERA,

Defendant.

**REPLY TO PLAINTIFF’S MEMORANDUM IN OPPOSITION
TO DEFENDANT’S MOTION TO DISMISS COMPLAINT**

Comes Now, defendant DAVID RIVERA, by and through his undersigned counsel, and files this reply to plaintiff’s memorandum in opposition to defendant’s motion to dismiss complaint. Mr. Rivera, although he denies all the allegations raised in the complaint, in further support of this motion to dismiss, states the following:

The complaint filed in this case accuses David Rivera of having knowingly and willfully violated 52 U.S.C. §30122 and 11 C.F.R. §110.4(b)(1)(iii) by having made contributions in the name of another when he caused, directed, and assisted in the making of contributions in the name of others to Justin Lemar Sternad’s 2012 primary campaign in Florida’s 26th U.S. Congressional District. (Complaint, paragraph 37). §30122 (formerly 2 U.S.C. §441(f)) states in its entirety “no person shall contribute in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person”. The statute does not define the term “in the name of another

person”. Plaintiff contends that this phrase may mean *using a false name*, or it may mean the name of a specific person whose name is not the same as the contributor. Under the first reading, the statute would prohibit contributions under “a name that is not a real name, but one that is made up.” Under the second interpretation, the statute prohibits a person from using the name of another person *i.e.* a conduit, to make a contribution. The Federal Election Commission argues that both interpretations would be a violation of §30122. For the first time, however, in its memorandum in opposition to the motion to dismiss, the Federal Election Commission argues that Rivera did not submit donations in a conduit scheme involving straw persons who inaccurately identified themselves as contributors (D.E. 20, p. 5), but now argues that the complaint is based upon Mr. Rivera having made contributions under a false name. Thus, Mr. Rivera is not accused of having used Alliegro, or any other conduit, to make donations to the Sternad campaign. (D.E. 20, p.14-15).

The complaint makes no allegation that Mr. Rivera falsely documented or made an effort to misrepresent to the vendors or to Sternad that their donations were made by “another person” or under a false name. The complaint alleges that Sternad was aware of, and agreed to, Rivera’s alleged offer to help fund his campaign. (Complaint, paragraphs 1 and 14). The complaint is silent and never contends that Rivera disguised or hid his alleged participation (from Sternad or anyone else) in the effort to fund Sternad’s campaign.

The complaint clearly alleges that Rivera assisted with donations and in-kind contributions by hiring vendors to provide service for the Sternad committee. (Complaint, paragraphs 15 and 16). However, nowhere in the complaint is there a contention that Rivera filled out a false document or provided false information to the Sternad campaign. In order for a violation of §30122 to have occurred, according to the FEC’s theory, Mr. Rivera would have had to submit to the

Sternad committee some form of information, written or oral, providing a fake name as the source of the funds used to pay the vendor. No such allegation has been made within the four corners of the complaint. Furthermore, in its memorandum in opposition, the FEC for the first time accuses Mr. Rivera of having “used Alliegro to direct Sternad to provide a false name for the source of the funds on its campaign disclosure form” (D.E. 20, p. 13). In truth, the complaint makes no mention of Mr. Rivera participating in any way in the decision for Sternad to falsify his disclosure reports. The complaint states “the reports fail to accurately disclose the source of the contributions described in paragraphs 13 to 21. Rather, **upon Alliegro’s instructions**, Sternad concealed the source of the contributions by falsely reporting them as loans from his personal funds to the Sternad committee” (Complaint, paragraph 22). The FEC might assume that Ms. Alliegro acted on the instructions of Mr. Rivera when she told candidate Sternad to put false information on his disclosure form, but the complaint fails to make that allegation. The complaint does not contain a single fact demonstrating that Mr. Rivera hid his identity from the vendors or from Sternad. In fact, the complaint alleges that Mr. Rivera used vendors with whom he was very familiar because he had used the same vendors in his own campaign. (Complaint, paragraph 16).

Plaintiff seems to believe that by alleging that Mr. Rivera paid the vendors in cash, or chose not to have the vendors’ invoices in his name, are examples of how he provided “undisclosed funds to the vendors.” (Complaint, paragraphs 17-19). Paying vendors in cash, or having a check delivered from a non-profit organization that Rivera allegedly helped establish, by themselves, do not establish that Mr. Rivera “used a false name or made “a contribution in the name of another”. Whoever physically paid the vendors and how the vendors were paid are not of great importance. What is required in order for §30122 to be violated is to hide the identity of the payor of the in-kind contributions from the candidate or the committee, or to somehow keep the information from being

reported on the disclosure reports. There is no allegation in this case that Mr. Rivera did that. In fact, the complaint states the opposite. The FEC alleges that the persons, (Rivera, Alliegro, and Sternad) all were in agreement that Rivera was going to provide funds to Sternad's primary campaign (Complaint, paragraphs 14, 15).

Under the facts established in this complaint, the only way Mr. Rivera could be liable for violating §30122 was if he was accused of instructing Ms. Alliegro to go to Mr. Sternad and tell him not to disclose the fact that Mr. Rivera was the source of the donations and the in-kind contributions to the vendors. In its memorandum, the FEC repeatedly inserts "facts" that do not appear in its complaint. Plaintiff argues in its memorandum that Rivera "concealed his involvement in the payments to the vendors and had Alliegro interact with Sternad and instruct him to falsely attribute his own name as the source of the in-kind contributions." "Rivera used Alliegro to direct Sternad to provide a false name for the source of those fund on his campaign disclosure reports to the FEC" (DE 20, p.13). These important facts are missing from the complaint. What appears in the complaint is that Ms. Alliegro, on her own, instructed Mr. Sternad to falsify his disclosure forms. (Complaint, p. 22).

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Without an allegation that Mr. Rivera himself used a false name, or that he secretly made donations without the knowledge of Mr. Sternad, or that he instructed Sternad, through Alliegro, to falsify his disclosure forms, there cannot be a violation of Title 52 U.S.C. §30122.

Respectfully submitted,

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/s/ Roy J. Kahn
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **December 18, 2017**, 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