



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

NOV 16 2004

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert Kelner, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue N.W.  
Washington, D.C. 20004-2401

RE: MUR 5396

Dear Mr. Kelner:

On October 26, 2004, the Federal Election Commission accepted the signed conciliation agreement and civil penalty check submitted on your client's behalf in settlement of violation of 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437(g)(4)(B). In addition, because of restrictions recently placed on the Commission with respect to its making public the investigative files in closed enforcement cases, only dispositive portions of the file, including the enclosed conciliation agreement, will be placed on the public record within 30 days. *See AFL-CIO v. Federal Election Comm'n*, 333 F.3d 168 (D.C. Cir. 2003).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

  
Kimberly D. Hart  
Attorney

Enclosure  
Conciliation Agreement

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 5396  
Campaign for Working Families PAC )  
and Amy R. Myers, as treasurer )  
 )

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

The Commission found reason to believe that Campaign for Working Families PAC and Amy R. Myers, as treasurer ("Respondents") violated 2 U.S.C. §§ 441a(a)(2)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Campaign for Working Families PAC ("CWF") is a political committee within the meaning of 2 U.S.C. § 431(4). CWF is a multi-candidate political committee, which registered as a political committee with the Commission in November 1996, and qualified for multi-candidate status in August 1997.

2. Amy R. Myers has been CWF's treasurer since June 5, 2000.

3. Bauer for President 2000, Inc. ("BFP") is a political committee within the meaning of 2 U.S.C. § 431(4). BFP is the authorized committee of Gary Bauer, a candidate for the Republican Party's nomination for the office of President in the 2000 election cycle.

4. Gary Bauer and others formed CWF in 1996. Gary Bauer served as Chairman of CWF until January 1999, when he resigned to become a candidate for President of the United States. After withdrawing his candidacy in February 2000, he once again became Chairman of CWF.

5. In early 1999, CWF and BFP negotiated a mailing list exchange agreement.

6. The agreement was memorialized in a memorandum dated January 22, 1999 between the President of a BFP direct mail vendor, the Lukens Cook Company ("Lukens"), and the treasurer of CWF.

7. The memorandum stated that to "facilitate the exchange process and ensure as few delays as possible" BFP would receive a complete copy of the CWF donor and non-donor files for use during the exploratory process and any subsequent presidential campaign. In exchange, BFP was to provide CWF with a complete copy of its donor and non-donor files at the end of the campaign. CWF and BFP were to pay the cost of providing each other with copies of their donor lists. The CWF names would remain the sole property of CWF and the BFP names would remain the property of BFP.

8. The memorandum further stated that list exchanges between BFP and CWF would be coordinated through Pinnacle List Company ("Pinnacle"), a list broker, which would keep an "exchange balance history for both donors and non-donors" including sample copy, mail dates and quantities for each BFP usage of CWF files. The memorandum stated that BFP would

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submit to Pinnacle a "Request to Mail Form" with proposed copy for each planned mailing. Upon CWF's approval, BFP would pull "selects" of groups of names from its copy of the CWF donor files, directly paying the cost of pulling these names, and provide an "output count" to Pinnacle. Likewise, the memorandum stated that when CWF received and used BFP's donor lists at the end of the campaign, it would pull its selects from BFP's files and directly pay the costs of doing so.

9. BFP provided an exchange balance to Pinnacle. Pinnacle stated through its President, Holly Ruble, that it did not have responsibility for or access to list usage communications between CWF and BFP during the campaign. It stated that it understood that a BFP staff member would track and record list exchanges between BFP and CWF. Pinnacle requested the "exchange balance and list usage records" between BFP and CWF at the end of BFP's campaign activity in March 2000 in "an effort to confirm and document the list exchange balances now owed" to CWF by BFP. Pinnacle provided a document it received from BFP listing information about each BFP use of the CWF donor file including the date and quantity and "shared this exchange transaction history with our client, CWF, by way of their list exchange log." Pinnacle asserted that it accepted BFP's record of these transactions as accurate. The exchange balance listed on the document provided by Pinnacle is a total of names used in the separate mailings and is larger than the total number of names on CWF's donor list; thus, some CWF names were used multiple times by BFP.

10. CWF provided its donor files to BFP soon after the agreement was made. CWF stated that on February 1, 1999 it made available to BFP the "Campaign for Working Families house list," containing 87,013 donors and 51,507 non-donors.

11. BFP used CWF's file 22 times during the period from February 5, 1999 through February 28, 2000, for an aggregate total of 957,338 names, and CWF used BFP's donor files 36 times from June 2000 through July 2004, for an aggregate total of 205,642 names. CWF has continued, and represents that it may continue in the future, to use BFP's donor file approximately once every six weeks. CWF and BFP did not use all the names in the respective files each time they used the files. Rather, they chose categories of names (selects) identifying segments or subgroups within a list from the complete list.

12. According to information obtained from the SRDS Direct Marketing List Source (December 1998-December 1999), the CWF rents its mailing list for \$115 per 1000 names and BFP rents its list for \$130 per 1000 names.

13. Based on the rates at which CWF and BFP rent their mailing lists, the value of 957,338 CWF names would be \$110,094 ( $957,338/1000 \times \$115$ ) and the value of 205,642 BFP names would be \$26,733.20 ( $205,642/1000 \times \$130$ ). Based solely on these rental rates, the difference in the value of the names therefore would be 83,360.80 ( $\$110,094 - \$26,733.20$ ).

14. In Advisory Opinion ("AO") 2002-14, the Commission allowed a committee to "exchange its mailing lists or portions of its mailing lists... provided that the lists or the portions of the lists that are exchanged are of equal value." In AO 2002-14 the Commission concluded that the rental or exchange of mailing lists by the Libertarian National Committee ("LNC") would not result in a contribution if certain conditions were met. The Commission noted that the LNC list was developed by the LNC over a period of time, had a unique nature and did not constitute merely a list purchased from other sources. It further noted that the list was developed primarily for the LNC's use for its own political or campaign purposes, and not for sale or lease of the names on the list to others. The lease of the LNC list was only a small

percentage of its use of the list. The Commission concluded that under these circumstances, the LNC could exchange its mailing lists or portions of its mailing lists with any organization, including a political committee, provided that the lists or portions of the lists that were exchanged were of equal value without the exchange resulting in a contribution or transfer subject to the Act.

15. BFP reported that it received a \$4,000 contribution from CWF on January 29, 1999.

16. As a multi-candidate committee, CWF could not legally contribute more than \$5,000 to BFP. 2 U.S.C. § 441a(a)(2)(A). After CWF contributed \$4,000 to BFP in January 1999, it could contribute only an additional \$1,000 under the limit.

17. The exchange of donor lists between CWF and BFP was not an exchange of donor lists of equal value and resulted in an excessive contribution by CWF to BFP.

V. Respondents made an excessive in-kind contribution to BFP in the form of the provision of CWF's donor list at less than the usual and normal charge, in violation of 2 U.S.C. § 441a(a)(2)(A). Respondents will cease and desist from violating 2 U.S.C. § 441a(a)(2)(A).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of fifteen thousand dollars (\$15,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION

Lawrence H. Norton  
General Counsel

BY:   
Rhonda J. Vøsding  
Associate General Counsel  
for Enforcement

11/16/04  
Date

FOR THE RESPONDENTS:

  
Amy R. Myers  
Treasurer

September, 2004  
Date

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