

MOYNAHAN, MINNELLA & TINDALL, LLC
ATTORNEYS AT LAW

TIMOTHY C MOYNAHAN
MARTIN J MINNELLA
TAVIS O TINDALL
MICHAEL J CULKIN
IOANNIS A KALOIDIS
JASON M LIPSKY
LORI MIZERAK*
MICHELLE NAPOLI-LIPSKY

MANAGING ATTORNEY
WILLIAM RJP BROWN*

*ALSO ADMITTED IN NY

141 EAST MAIN STREET
P O BOX 2242
WATERBURY, CT 06722-2242
(203) 573-1411
(800) 473-2889
FAX (203) 757-9313
attys@moynahanlawfirm.com
www.moynahanlawfirm.com

OF COUNSEL
STEPHEN A RUSKIN
FREDERIC E MASCOLO
THOMAS L BRAYTON

ADMINISTRATOR
ANGELA M SMITH

HARTFORD
ONE LEWIS PLACE
HARTFORD, CT 06103
(860) 249-8555

WOLCOTT
246 WOLCOTT ROAD
WOLCOTT, CT 06716
(203) 879-2008

VIA FEDERAL EXPRESS
AND FAX

September 9, 2004

Christine Gallagher, Esq.
Federal Election Commission
Office of the General Counsel
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 5453
Thomas M. Ariola, Jr.
Response to Factual and Legal Analysis

Dear Attorney Gallagher:

Please find enclosed Mr. Ariola's response to the FEC's Factual and Legal Analysis.

Also, I write this letter to inform you that Mr. Ariola is interested in pursuing pre-probable cause conciliation (See 11 CFR § 111.18(d)).

Sincerely,



Lori Mizerak

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF THE
GENERAL
COUNSEL

SEP 10 P 12:01

26044130973

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONSE

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 10 P 12 01

RESPONDENT: Thomas M. Ariola, Jr.

I. The Day-to-Day Workings of the Giordano for Senate Campaign Committee

Philip Giordano named Thomas M. Ariola, Jr. Campaign Deputy Treasurer sometime in early 2000. Giordano's campaign team of Tom Longino, Dan Grasso, Mike Pieskza and Jim Paolino filled out the appropriate paperwork to initiate this. Ariola never saw this paperwork nor was he required to personally complete any documents.

After members of the campaign team completed the appropriate paperwork, they gave Ariola a bank card for him to sign as a check writer. Ariola was told by Longino, Campaign Manager, that his only job as Deputy Treasurer was to sign checks paid to campaign-related vendors.

Giordano's campaign team of Longino, Grasso, Pieskza and Paolino collected donations at campaign fundraisers and deposited them in the bank. When collecting donations over \$200, the team was supposed to record the name of the donor, the date of the donation, the donors' address and the donors' employer.¹

Ariola did not think that it was his responsibility to oversee and supervise the receipt of donation checks because he was told by Longino that his responsibility to the campaign was to sign checks for payment to vendors. Ariola never was invited to nor attended campaign fundraisers and he did not have a role in the receipt of donations.

¹ 11 CFR 104.8 requires that individuals who give contributions in excess of \$200 be identified by name, mailing address, occupation, name of employer, amount and date of receipt of contribution.

Ariola handled only disbursements, mostly through conversations with Longino who directed which vendors needed to be paid.²

Treasurer Bluementhal quit the campaign sometime in 2000 and a new Treasurer was not appointed. Ariola was never formally designated by Giordano nor by his campaign team as assistant treasurer and he was never directed to assume all duties and responsibilities of Treasurer Bluementhal.

After Bluementhal quit, Ariola, was left with the task of completing campaign finance reports. Specifically, Ariola had to identify all donors who gave more than \$200 to the campaign in a year by first name, last name, middle name or initial, if available, mailing address, occupation and name of employer; compile reports with this information; and file these reports with the FEC.³ Ariola was never told by the committee members how to complete these reports nor was he ever given any educational tools (books, manuals, etc.) by the committee members, or by anyone else, with guidelines and instructions for completing the reports.

Each quarter, close to the date that the reports were due, Longino would present Ariola with a box of receipts and copies of checks that were donated to Giordano's campaign. Ariola repeatedly asked Giordano's team for all of the donation records but he was never presented with a complete set of these records. Ariola tried to piece the information together and often had to call Giordano for assistance in tracking who the

² The only two checks that Ariola ever received were 2 from Mr Martin, of Martins Landscaping, and 1 from Director of Purchases, City of Waterbury, Rocco Orso in 2001, after the election was over. In July 2001, Giordano informed Ariola that there was a deficit in the campaign, i.e., more money was spent than donations received. Giordano asked Ariola if he could talk to Orso and Martin to inquire whether they would be willing to contribute to the campaign to help make up for this deficit. Ariola spoke to Orso and Martin and they were willing to contribute. Orso and Martin brought the checks directly to Ariola to give to Giordano.

³ See 11 CFR 104.8 for FEC rules and regulations re. campaign donation reports.

donors were, where they worked and where they lived. When records were provided to Ariola, they were often incomplete and disclosed only some of the pertinent and required donor information. In addition, when Ariola was provided with copies of donation checks, often only the bank name was clearly identifiable on the check and not the name of the actual donor. Further, donation checks continued to be accepted by Giordano's team, and not by Ariola, after Bluementhal quit and Ariola had to rely on the team to provide running tallies of the donations received.⁴ Ariola thus completed the campaign reports as best he could and signed the reports "In absence of a treasurer".

Given these many problems with the documentation of campaign contributions, Ariola repeatedly tried to resign as Deputy Treasurer after Bluementhal quit.⁵ Further, Ariola felt pressure with his duties as Chief Fiscal Officer for the Department of Education and Budget Director for the City of Waterbury and did not want to assume more responsibility. Until Giordano was arrested in July 2001 and the campaign records were subsequently seized by the FBI, however, Ariola was left with completing the campaign reports to the best of his abilities.

II. The October 2000 Quarterly Report, the 2000 12-Day-Pre-General Report, the 2000 30-Day Post General Report, and the 2000 Year-End Report

A. Ariola's reporting of corporate campaign contributions and excessive individual contributions

⁴ This was not in compliance with 11 CFR 102.7 which states that no donation or expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of treasurer, except when an assistant treasurer is designated to assume responsibilities of the treasurer in the event of a vacancy in the office. Where an assistant is designated, this person can accept contributions and make expenditures. Here, Ariola was only directed by the team to assume Bluementhal's responsibility of completing reports and not any other responsibilities.

⁵ In fact, Ariola sent the FEC a letter dated July 31, 2001 stating that he resigned as Deputy Treasurer (See Exhibit A - copy of letter).

The FEC reports that the 2000 October Quarterly Report and the 30-Day Post-General Report disclosed excessive individual contributions and/or corporate contributions. The FEC further reports that in the 2000 October Quarterly Report, 2000 12-Day Pre-General Report, 2000 30-Day Post General Report and the 2000 Year-End Report, the Committee failed to report complete contributor information for individual contributions disclosed.

By letter dated February 15, 2001, Paolino notified the Commission that Ariola was the new treasurer of the Committee. Although Paolino notified the Committee, he never notified Ariola - Ariola was simply given copies of campaign contribution checks and/or incomplete contribution records by the campaign team for purposes of completing the campaign reports.

Although Ariola was cognizant of the fact that some of the checks were corporate checks and that some individual contributions were excessive, he decided to report any check that was given to him by the campaign team. Ariola did not have sufficient time to do anything other than complete the reports to the best of his ability since the copies of campaign checks and/or incomplete contribution records were given to him by the campaign team only a few days before the reports were due.

B. Applicable Case Law

In FEC v. California Democratic Party, 13 F.Supp.2d 1031 (1998), the treasurer of the California Democratic Party, Gary Paul, was sued in his individual capacity and in his official capacity as treasurer. At the time of the alleged violations, Paul was not the treasurer.

In its analysis, the court noted that the FEC appeared to seek a civil penalty against Paul as an individual for an act that occurred prior to his tenure as treasurer and failed to provide any authority for seeking a penalty for acts occurring prior to his tenure. The FEC argued that the case should not be dismissed because he was the treasurer during the time of the FEC's efforts to conciliate the matter and at the time the complaint was filed.

The court determined that since there was no allegation that Paul violated any personal obligation, the individual capacity claims against him were dismissed. The court further found that since Paul was no longer the treasurer at the time of the FEC's investigation and at the time of the initiation of the civil suit, he was not the appropriate person against whom an official capacity suit could be maintained. The court accordingly dismissed the case brought against him in his official capacity.

Much like the defendant in FEC v. California Democratic Party, Ariola was not the treasurer at the time that the alleged violations occurred, nor is he the treasurer at the present time of the FEC's preliminary investigation of the Giordano for Senate Campaign. In particular, the campaign reports identified by the FEC in its Factual and Legal Analysis reference donations received in 2000; Ariola was designated treasurer in February 2001, well after the time any of the reports identified by the FEC were filed.⁶ Accordingly, and as in FEC v. California Democratic Party, Ariola is not the appropriate person, in his individual capacity nor in his official capacity, against whom to bring a suit.

⁶ Further, as previously stated, there is a dispute as to whether Ariola personally received notice that he was the new campaign treasurer.

III. The Patriot National Bank Loan

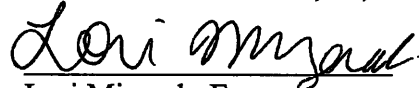
Ariola knows very little about the \$300,000 Patriot National Bank loan. He explains that Giordano told him that he needed to accompany him and his wife to the bank. Giordano informed Ariola that he and his wife were obtaining a loan and that he needed Ariola to sit in the bank waiting room with his children while he and his wife signed the necessary paperwork. Giordano did not disclose to Ariola the purpose of the loan nor did he disclose to Ariola the collateral securing the loan.

Although Ariola may have prepared reports which disclosed the \$300,000 loan, he had no knowledge of any improper conduct by the committee or by Giordano with respect to the loan. Accordingly, Ariola should not be held responsible, in his personal capacity nor in his official capacity as Treasurer of the Giordano for Senate Campaign, for any alleged improper conduct stemming from the loan.

III. Conclusion

Based on the foregoing, Ariola has not violated: (1) 2 USC §§ 441 a(f), 2 USC §§ 441 b(a) and 2 USC §§ 434(b)(3)(A) in his personal capacity; and (2) 2 USC §§ 441 b (a), 441 a(f), 432(i) and 434(b)(3)(A) in his official capacity as treasurer of the Giordano for Senate Campaign.

Respectfully Submitted
For Thomas M. Ariola, Jr.,



Lori Mizerak, Esq.
Moynahan, Minnella & Tindall, LLC
141 East Main St.
Waterbury, CT 06722-2242
(203) 573-1411 (phone)
(203) 757-9313 (fax)

26044130979