



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Alison for Kentucky and Robert Stilz III)	
in his official capacity as treasurer;)	MUR 6863
Alison Lundergan Grimes;)	
S.R. Holding Co., Inc. d/b/a)	
Signature Special Event Services)	

**STATEMENT OF REASONS OF
VICE CHAIR CAROLINE C. HUNTER AND
COMMISSIONERS LEE E. GOODMAN AND MATTHEW S. PETERSEN**

This matter arose from a complaint alleging that Alison Lundergan Grimes (“Grimes”), her principal campaign committee, Alison for Kentucky (the “Committee”) and Robert C. Stilz III in his official capacity as treasurer, and S.R. Holding Co., Inc. d/b/a Signature Special Event Services (“SSES”) (collectively, the “Respondents”) each violated the Federal Election Campaign Act of 1971, as amended (the “Act”), when Grimes and the Committee accepted prohibited corporate in-kind contributions from SSES in the form of a motor coach leased at below market rate. We voted against finding reason to believe that the Respondents violated the Act because the facts in the record did not warrant it.

I. FACTUAL BACKGROUND

Grimes was a candidate for U.S. Senate in Kentucky during the 2014 election cycle. During the campaign, the Committee leased a motor coach wrapped with Grimes’s picture and campaign logo to transport Grimes to campaign destinations throughout Kentucky.¹ The Committee leased the motor coach from SSES, which is owned by Grimes’s father, Gerald G. Lundergan.² In 2013, SSES had purchased the pre-owned 2003 Provoost H3-45 Star Coach for one of its companies, Emergency Disaster Services (“EDS”), which is in the business of “owning, operating, and leasing a fleet of equipment for housing, shelter and command centers” and whose “fleet includes motor coaches such as” the one rented to the Committee.³ Between October 2013 and November 2014, the Committee reported making payments to SSES totaling

¹ Joint Response of Alison Grimes, Alison for Kentucky, Inc., and Robert C. Stilz III (“Comm. Resp.”) at 2 (Oct. 17, 2014); Compl. Ex. G.

² Comm. Resp. at 1.

³ Signature Special Event Services Response (“SSES Resp.”) at 2 (Oct. 17, 2014). EDS stated that the motor coach will be available for lease as part of EDS’s fleet once the lease with the Committee concludes. *Id.*

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\$29,859.12 in connection with its lease of the motor coach, including a \$5,500 payment to wrap the motor coach with Grimes's picture and campaign logo.⁴

According to the Complaint, the Committee paid only \$456 per day to lease the motor coach, which was below an estimated fair market value of \$1,500-\$2,000 per day.⁵ To support this allegation, the Complaint included "quotes"⁶ from three vendors for the lease of an executive coach, including fuel, driver, gratuity, and accommodations for the driver.⁷ The Complaint states that the Committee had "apparent 24-hour on-call access" to the motor coach but only paid for days that the Committee actively used it.⁸

The Respondents maintain that the Committee paid the usual and normal charge to SSES for the Committee's lease of the motor coach, which the Respondents determined to be \$380 per day plus fuel and other out-of-pocket costs (e.g., the wrap).⁹ Prior to the Committee's lease of the motor coach, the Respondents obtained quotes from two different vendors for the lease of a motor coach, one of which pertained to the lease of the identical make and model of the motor coach that the Committee rented from SSES.¹⁰ These quotes ranged from \$150-\$180 per day.¹¹ The Respondents obtained an additional quote for the cost of a driver—\$200 per day—and determined the usual and normal charge for use of the motor coach to be \$380 per day plus fuel costs.¹²

On this record, the Office of the General Counsel ("OGC") concluded that "it is unclear which daily rate more accurately represents the usual and normal charge for leasing a motor coach comparable to the one used by the Committee."¹³ OGC nevertheless recommended that we authorize an investigation, reasoning that the Committee may have received an in-kind

⁴ See Comm. Resp., Ex. C (detailing payments to SSES through June 30, 2014); Alison for Kentucky, 2014 Pre-General Report at 2857 (disclosing a \$3,480 payment to SSES); Alison for Kentucky, 2014 Post-General Report at 5086 (disclosing a \$9,940.00 payment to SSES).

⁵ Compl. at 4, Exs. C & D.

⁶ The Complaint did not provide the underlying documentation of the vendors' quotes, such as quotes on vendors' letterhead or emails. Instead, the Complaint (at least, what appears to be) includes notes taken from conversations or text that have been copied-and-pasted from another source. We take the quotes as accurate because they were included in a notarized complaint.

⁷ See Compl., Ex. C. Two of the quotes refer to "executive" coaches, and the third quote pertained to a motor coach that included amenities such as multiple DVD players, satellite radio/TV, and a dozen bunks. *Id.*

⁸ *Id.* at 4-5.

⁹ SSES Resp. at 2; Comm. Resp. at 2-3.

¹⁰ SSES Resp. at 2-3, Attachs. A & B.; Comm. Resp. at 3, Exs. A & B.

¹¹ SSES Resp. at 2; Comm. Resp. at 2-3.

¹² Comm. Resp., Ex. A.

¹³ First General Counsel's Report at 9 (Mar. 6, 2015).

contribution for the value of the motor coach on those days that the Committee did *not* use the motor coach.¹⁴

II. LEGAL ANALYSIS

Under the Act, corporations may not make contributions to federal candidates or authorized committees.¹⁵ Likewise, federal candidates and authorized committees may not knowingly receive corporate contributions.¹⁶ A contribution includes any gift of money or anything of value made by any person for the purpose of influencing a federal election.¹⁷ The term “anything of value” includes an in-kind contribution, which is the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.¹⁸

The usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; while the usual and normal charge for services means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.¹⁹ If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the political committee.²⁰ For travel on noncommercial transportation other than aircraft (*e.g.*, automobiles), Commission regulations clarify that the appropriate payment rate is the “normal and usual fare or rental charge for a comparable commercial conveyance.”²¹

The Act and Commission regulations do not provide a formula for determining the “usual and normal charge.” Indeed, the Commission has generally not conducted *de novo* reviews of the prices for goods and services agreed upon by vendors and committees. Instead, the

¹⁴ The Complaint also alleged that SSES made an in-kind contribution because SSES does not offer motor coach rentals in its ordinary course of business. Compl. at 3-5. Presumably because Commission regulations do not support such an assertion, *see* 11 C.F.R. § 100.52(d) (defining in-kind contribution to mean only the provision of “goods or services without charge or at a charge that is less than the usual and normal charge”), OGC did not recommend that SSES made an in-kind contribution on those grounds. Accordingly, we do not address that portion of the Complaint.

¹⁵ 52 U.S.C. § 30118(a).

¹⁶ *Id.*

¹⁷ 52 U.S.C. § 30101(8)(A).

¹⁸ 11 C.F.R. § 100.52(d)(1).

¹⁹ *Id.* § 100.52(d)(2).

²⁰ *Id.*

²¹ 11 C.F.R. § 100.93(d).

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Commission has recognized that vendors have wide latitude in the “commercial considerations” they take into account when determining what to charge political committees.²²

For example, in MUR 6295 (Sue Lowden for U.S. Senate), the Commission dismissed an allegation that a committee paid less than the usual and normal charge to rent a recreational vehicle, even though “it [was] not clear how the [respondent committee] determined the rental rate of \$95 per day.”²³ In that matter, the respondents provided a local newspaper’s survey of rental companies showing that a lease of the same make and model vehicle could range from \$50 per day to several hundred dollars per day, depending on the season.²⁴ In dismissing the complaint, the Commission took into account the age and condition of the recreational vehicle as well as the length of the lease before concluding that these factors “may warrant a discount to the rental charge for short-term rentals of presumably new, or newer vehicles in relatively good repair.”²⁵

More recently, in MUR 6937 (NextGen Climate Action Committee), the Commission dismissed allegations that a Super PAC made a contribution to an authorized committee by purchasing an email list from the authorized committee at more than fair market value.²⁶ The respondents submitted evidence that its list broker valued the list at \$177,817.60, which was the purchase price. The Commission did not question the valuation, instead relying on this evidence to dismiss the complaint.²⁷

Here, the Respondents provided contemporaneous evidence of quotes from two motor coach vendors, which they used to determine a reimbursement rate of \$380 per day (exclusive of fuel costs and the wrap).²⁸ As the Respondents note, relying upon the quotes provided in the Complaint would be an apples-to-oranges comparison. Whereas the Complaint obtained quotes for newer “executive and entertainment coaches” with luxurious amenities, the Respondents obtained quotes for motor coaches of similar age and with similar limited amenities to the leased

²² Advisory Opinion 2012-31 (AT&T) at 4; *see also* Advisory Opinion 2012-28 (m-Qube) at 7 (“Each wireless service provider determines the rate it will charge . . . based on its own usual and normal commercial criteria.”).

²³ *See* Factual & Legal Analysis at 6 (Dec. 17, 2010), MUR 6295 (Sue Lowden for U.S. Senate).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See* Factual & Legal Analysis at 3-4 (Apr. 19, 2016), MUR 6937 (NextGen Climate Action Committee).

²⁷ *Id.*; *see also* Statement of Reasons of Chairman Steven T. Walther, Vice Chairman Matthew S. Petersen, and Commissioners Cynthia L. Bauerly, Caroline C. Hunter, and Ellen L. Weintraub at 2-3, MUR 5964 (Shock for Congress) (dismissing complaint where committee provided contract between it and vendor and an invoice for payment to vendor).

²⁸ SSES Resp. at 2-3; Comm. Resp. at 2-3. The Complaint also asserts that the ownership of SSES by Grimes’s father indicates the transaction was suspect. We disagree that this fact gives rise to a reason-to-believe finding, particularly in light of the evidence provided by the Respondents.

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motor coach.²⁹ We agree with OGC that the record before the Commission “does not support one estimate over the other.”³⁰

Nevertheless, OGC recommended finding reason to believe that the Committee “received an added benefit without charge” on those days the Committee did not use the motor coach because it was “on-call for the Committee’s use.”³¹ According to OGC’s theory, the Committee may have had exclusive, on-call access to the motor coach between October 2013 and November 2014 and such access amounted to an in-kind contribution from SSES to the Committee. We disagree with this recommendation for two reasons. First, it is grounded more in speculation than in the record evidence. Second, even if the Committee did have exclusive, on-call access to the motor coach, nothing in the record suggests that such access was not commercially reasonable or part of the bargained-for exchange between SSES and the Committee.³²

To support its reason-to-believe recommendation, OGC argues that the motor coach “remained wrapped . . . even when not in use by the Committee . . . presumably [to] prevent SSES from using the motor coach for other purposes” during the lease term.³³ It is reasonable to infer that the motor coach remained wrapped (or was wrapped only once) during the lease period, because the Committee reported only one disbursement related to the wrap. There is, however, nothing in the record that could lead us to reasonably infer *why* the motor coach remained wrapped during the lease period. OGC speculates that the motor coach remained wrapped because the Committee had exclusive use of it, but SSES alternatively could have, for example, left the motor coach wrapped because there weren’t any emergencies or disasters necessitating SSES to lease out the motor coach. Further, SSES was under no obligation to remove the wrap after each of the Committee’s uses of the motor coach. Such an interpretation of the Act, if not legally absurd, would have resulted in nothing more than economic waste, requiring SSES and the Committee to remove and re-wrap the motor coach numerous times throughout the campaign.

²⁹ Comm. Resp. at 3.

³⁰ First General Counsel’s Report at 9.

³¹ *Id.*

³² OGC also appears to draw an adverse inference against the Respondents because the Respondents do not “deny, or address whatsoever,” the Committee’s purported on-call access to the motor coach. *Id.* at 9. However, OGC—not the Complaint—first theorized that the Committee’s purported on-call access of the motor coach could be a prohibited in-kind contribution from SSES. The Complaint notes in passing that the Committee had “apparent 24-hour on-call access to the motor coach,” but the Complaint does not tie this assertion in with its allegation that the Committee paid less than the usual and normal charge for its use of the motor coach. Compl. at 4-5. Instead, the Complaint focuses on the daily rate the Committee paid to SSES, in addition to arguing that the entire transaction constituted an in-kind contribution because SSES did not ordinarily lease motor coaches. *See supra* note 20. Under these circumstances, it is not surprising that the Respondents did not flesh out a response with respect to a particular rhetorical flourish included in the Complaint. Therefore, the fact that the Respondents did not address in their responses OGC’s yet-to-be-formulated theory should not be held against them.

³³ First General Counsel’s Report at 9-10.

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In further support of its inference that the Committee had "24-hour on-call access" to the motor coach, OGC flags SSES's statement that the motor coach would "continue to be available for lease as part of EDS' fleet" "[w]hen the lease with the [Committee] concludes."³⁴ OGC reasoned that this statement "impl[ies] that during the Committee's lease period [the motor coach] was not available for other uses."³⁵ But this statement came in response to the allegation that SSES made an in-kind contribution to the Committee through its purchase of the motor coach because the motor coach was not part of SSES's ordinary business. SSES's response to that point merely indicated that its purchase of the motor coach was consistent with its equipment rental business.

Moreover, even if the Committee did have "24-7" access to the motor coach, no evidence in the record suggests that the access was not commercially reasonable or part of the bargained-for exchange between SSES and the Committee. Particularly in light of the flexibility that the Commission has shown in evaluating the "commercial reasonableness" of commercial transactions,³⁶ the Complaint has not met its burden to provide evidence, not mere speculation, that there is reason to believe the Respondents violated the Act and thus that these allegations warrant an investigation.

Finally, even if the Committee had exclusive access to the motor coach and such access called for a different valuation, the only issue for the Commission to investigate and determine would be any potential difference between the valuation of an identical motor coach in Kentucky at that time and the rental price paid by the Committee. We do not believe this would be a constructive use of Commission resources, as any difference in value would be subject to highly

³⁴ SSES Resp. at 2.

³⁵ First General Counsel's Report at 10.

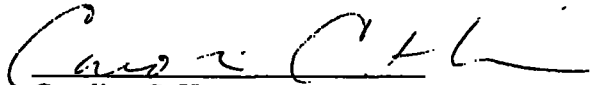
³⁶ See supra notes 22-27 and accompanying text.

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discretionary, nebulous valuations and would likely not rise to such a significant amount that the Commission would pursue it in an enforcement action.³⁷

Accordingly, we voted against finding reason to believe and, instead, to close the file.


2/15/17
Date


Caroline C. Hunter
Vice-Chair

2/15/17
Date


Lee E. Goodman
Commissioner

FEB. 15, 2017
Date


Matthew S. Petersen
Commissioner

³⁷ See Heckler v. Chaney, 740 U.S. 821, 831-35 (1985).

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