



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR - 9 2009

Charles G. King, Esq.
60 East 42nd Street
Suite 3210
New York, NY 10165

RE: MUR 5408
National Action Network, Inc.;
Alfred C. Sharpton, as President

Dear Mr. King:

On April 2, 2009, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). 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. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that, pursuant to the conciliation agreement, the civil penalty is due no later than May 1, 2009. If you have any questions, please contact me at (202) 694-1650.

Sincerely,


Camilla Jackson Jones
Attorney

Enclosure
Conciliation Agreement

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

National Action Network, Inc.
and Alfred C. Sharpton, as President

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) MUR 5408

CONCILIATION AGREEMENT

This matter was initiated an outside complaint as later supplemented by information the Federal Election Commission ascertained in the normal course of carrying out its supervisory responsibilities. The Federal Election Commission ("Commission") found reason to believe that National Action Network, Inc. ("NAN") and Alfred C. Sharpton, as an officer of NAN, violated 2 U.S.C. § 441b by making impermissible corporate contributions to Sharpton 2004 ("the Committee").

NOW, THEREFORE, the Commission and the National Action Network and Alfred C. Sharpton, in his capacity as President of NAN (collectively "Respondents"), having participated in informal methods of conciliation prior to a finding of probable cause to believe, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- 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:

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Background

1. Reverend Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in the 2004 primary election. Sharpton filed a Statement of Candidacy on April 29, 2003 but has admitted that he was a candidate no later than October 2002.¹

2. Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) was the principal campaign committee for Sharpton.

3. National Action Network, Inc. is a domestic non-profit corporation founded by Sharpton in 1991 and incorporated in the State of New York in 1994. Sharpton has served as President of NAN since its inception and the organization's primary purpose is to perform community and civil rights work.

Applicable Law

4. The Federal Election Campaign Act of 1971, as amended, ("the Act") The Act provides that it is unlawful for a corporation to make a contribution in connection with an election for federal office, or for any corporate officer to consent to the making of any contribution by the corporation in connection with an election for federal office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1).

5. The Act defines "contributions" or "expenditures" as "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, or

¹ On January 21, 2004, Sharpton and his exploratory committee entered into a Conciliation Agreement with the Commission in MUR 5363, admitting that Sharpton was a candidate at least as early as October 2002, yet failed to file his Statement of Candidacy, an Amended Statement of Organization, and two disclosure reports in a timely manner. See MUR 5363 Conciliation Agreement ¶¶ V.1-3.

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any other person" in connection with any election to any political office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1).

6. Expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including the candidate, shall be qualified campaign expenses and be reported by the candidate's authorized committee as an expenditure. 11 C.F.R. § 9034.7(a). If the trip is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(1). If a trip includes campaign and non-campaign related stop, the campaign-related portion of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(2). A stop is considered campaign-related if campaign activity, other than incidental contact, is conducted at the stop. *See id.*

Travel for Shared Events Between NAN and Sharpton 2004

7. During his candidacy, Sharpton traveled extensively, and routinely mixed travel that was for both the Committee and NAN. The costs of this dual campaign and non-campaign travel should have been allocated between the Committee and NAN, pursuant to the Commission regulations, so that the Committee would pay for all campaign travel. However, Sharpton 2004 kept poor records of its activities and expenditures, which often resulted in NAN paying for travel expenses incurred by the campaign.

8. It was the practice to charge all travel expenses to Sharpton's American Express charge card. The card was then paid by using multiple accounts owned by Sharpton, NAN and/or the Committee. However, there were no ledgers kept to record the check numbers, the amounts, what loans or activities the checks were meant to pay or reimburse, for whom the

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payments or reimbursements were meant, and/or whether the checks were meant to be direct payments to the American Express card or reimbursements for payments already made.

9. Concern was expressed within the Committee about the problem of commingling expenses, and efforts were made to implement policies and procedures to ensure that the Committee properly segregated and allocated expenses between NAN and the Committee. In fact, consultants who worked with both NAN and Sharpton 2004 were instructed to develop an invoice to be used for allocating expenditures for shared events between the NAN and the Committee. Yet, there was a breakdown at the administrative level in the implementation of those procedures, and the adoption of proper recordkeeping and use of invoices by staff at both organizations continued to be a problem.

10. As a consequence of the Committee's poor recordkeeping, coupled with the practice of charging Committee, NAN and other expenses to Sharpton's personal American Express card and later paying the American Express account with monies drawn from various bank accounts, NAN and Sharpton's business entities often paid for campaign expenses that were not reimbursed or reported to the Commission.

11. The Commission determined that by applying the proper allocations to the travel expenses, the Committee incurred \$509,188 in campaign-related expenses on Sharpton's American Express card, but had made payments on the card from its bank accounts in amounts totaling only \$121,996. Thus, \$387,192 was paid to Sharpton's American Express account for campaign expenses from other sources.

12. The Commission concluded that NAN made payments totaling \$107,615 to the American Express card for Committee expenses, in violation of the prohibition against corporate contributions set forth in 2 U.S.C. § 441b.

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Payments to Vendors and Consultants

13. Although contrary to their original intent, NAN effectively subsidized the Sharpton 2004 presidential campaign by paying for vendors and consultants who performed work to benefit the Committee. Though originally retained by NAN in October 2003 to develop a voter registration plan and to conduct NAN's scheduling and advance logistics, the Archer Group began working exclusively for the Committee in November 2003. The work the Archer Group performed for the Committee was the continuation of work paid by NAN. Documents produced by the Committee show that Archer Group staff handled campaign travel arrangements, including travel reservations for Sharpton, during the October 2003 time period that the Archer Group was supposedly working exclusively for NAN.

14. The Commission determined that the Committee received approximately \$73,500 from NAN for in-kind contributions, which consisted of payments to consultants and vendors for campaign-related work, including scheduling, logistics and voter registration services, fundraising and travel.

15. NAN made impermissible in-kind contributions to the Committee, in violation of 2 U.S.C. § 441b, totaling \$181,115, which includes \$107,615 in payments to the American Express account and \$73,500 in direct payments to vendors and consultants.

V. Respondents violated the Act in the following ways:

1. National Action Network, Inc. violated 2 U.S.C. § 441b by making impermissible corporate contributions to Sharpton 2004; and
2. Alfred C Sharpton, in his official capacity as President of National Action Network, Inc., violated 2 U.S.C. § 441b(b)(2) by consenting to the making of impermissible corporate contributions to Sharpton 2004.

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3. This agreement does not establish or mean that any of the violations were knowing and willful.

VI. Respondents will cease and desist from violating 2 U.S.C. §§ 441b by making prohibited corporate contributions in connection with an election for Federal office.

VII. Respondents will pay a civil penalty of Seventy Seven Thousand Dollars (\$77,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). Respondents shall pay the civil penalty no later than May 1, 2009.

VIII. 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.

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

X. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission, except as otherwise expressly specified in Paragraph VII.

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XI. 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.

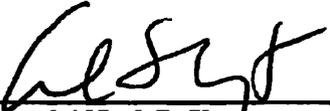
FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY: 
Ann Marie Terzaken
Associate General Counsel
for Enforcement

4/8/09
Date

FOR THE RESPONDENTS:


Reverend Alfred C. Shapton
President, National Action Network, Inc.

2/17/09
Date

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