



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
U.S. Dry Cleaning)
David Vitter)
David Vitter for U.S. Senate and,)
William Vandrebrook)
In his official capacity as treasurer)
Robert and Regina Lee)
Tim and Mary Denari)
Riaz and Donna Chauthani)
Jamal and Cymetria Ogbe)

MUR 6279

STATEMENT OF REASONS

**Vice Chair CAROLINE C. HUNTER and
Commissioners DONALD F. McGAHN and MATTHEW S. PETERSEN**

This matter arises from a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the complaint alleges that U.S. Dry Cleaning and its officers and some of their spouses made corporate contributions and contributions in the name of another from to David Vitter for U.S. Senate (the "Vitter Committee"). As explained below, the information before the Commission does not establish reason to believe that the respondents violated the Act or Commission regulations. Therefore, on December 1, 2010, we voted to close the file in this matter.

I. BACKGROUND

The complaint in this matter alleged that the Act and Commission regulations were violated as a result of: (1) U.S. Dry Cleaning using corporate funds to reimburse contributions made to the Vitter Committee, and (2) the Vitter Committee accepting these reimbursed contributions.¹ In support of that allegation, the complainant submitted an article that appeared in the *New Orleans Times-Picayune* in April 2010, discussing an August 2009 fundraising dinner hosted by the Vitter Committee that was attended by four senior officers of U.S. Dry Cleaning, and three of their respective spouses, at which they contributed a total

¹ MUR 6279, Complaint at ¶¶ 9-10.

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of \$38,400 to the Vitter Committee. The article quoted the former Director of Finance for U.S. Dry Cleaning, Jamal Ogbe, as saying that “he was eventually reimbursed by his employer for his \$4,800 contribution.”² The article also reported that Ogbe stated that the company was facing financial difficulties in 2009 and hoped that Senator Vitter would help them obtain federal stimulus funds or assistance from the Small Business Association.³

Jamal Ogbe, who no longer works for U.S. Dry Cleaning, was notified along with his spouse regarding the complaint, but they did not respond.⁴ U.S. Dry Cleaning, its senior officers— President and CEO Robert Lee, Chief Financial Officer Tim Denari, and Director of Acquisitions Riaz Chauthani—and the officers’ spouses (collectively, “Respondents”) submitted a joint response to the complaint, in which they made clear that, at the time of the contributions, the officers in question were owed “significant amounts of money in back wages.”⁵ The response further explained that as funds became available to pay the senior officers the money owed to them, the company would write them checks and reduce the amount owed to them in its ledger. The response not only stressed that the “funds paid to these employees were earned wages” but offered to provide copies of company records that reflected these transactions and allow company staff to explain the processes for compensating senior level management.⁶

In a supplemental response, the Respondents reiterate that “[t]he funds paid to these employees were earned wages”⁷ and rebut Mr. Ogbe’s reported assertions. Respondents stated that “Mr. Ogbe is misguided in his understanding if that is in fact what he claims. He was simply paid back wages that were owed to him as reflected in the enclosed accounting.”⁸ The supplemental response also included an affidavit from Stacy Galeano, the Manager of the Accounts Payable division of the company, and four schedules (one for each officer in question) from the company’s accounting system.

The company’s financial records, submitted as part of the supplemental response, demonstrate: (1) an amount for salary and benefits was added monthly to the total owed to them; (2) that numerous payments described as “Suspense”⁹ were made to them and were

² Bruce Alpert, [Sen. David Vitter Cleans Up With Donations From Dry Cleaning Executives](#), New Orleans Times-Picayune, April 8, 2010.

³ *Id.*

⁴ MUR 6279, First General Counsel’s Report (“FGCR”) at 4 n.6.

⁵ MUR 6279, Response at 1.

⁶ *Id.* at 2.

⁷ MUR 6279, Supplemental Response at 1.

⁸ *Id.* at 2.

⁹ OGC draws significance from the fact that, with respect to the four August payments apparently corresponding to Respondents’ contributions, “the company’s records identify the payments under the ambiguous category of ‘suspense’ and not clearly as back wages.” FGCR at 8. We note, however, that there is nothing unique in the records about this designation. To the contrary, more than 60 similar payments to these officers were labeled “Suspense” – including the 18 payments made in August 2009. Of

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deducted from the balance owing to them; and (3) when the contributions were made in August 2009, the officers had a balance owing to them. Specifically, the accounting¹⁰ itemizes the following:

- Robert Lee: At the end of July, he was owed \$ [REDACTED] by the company. In August, he was additionally owed \$ [REDACTED] in salary and benefits for that month, and he was paid \$ [REDACTED] that month in five payments (including the \$ [REDACTED] in question). At the end of August, he was then owed \$ [REDACTED].
- Riaz Chauthani: At the end of July, he was owed \$ [REDACTED] by the company. In August, he was additionally owed \$ [REDACTED] in salary and benefits, and he was paid \$ [REDACTED] that month in three payments (including the \$ [REDACTED] in question). At the end of August, he was then owed \$ [REDACTED].
- Tim Denari: At the end of July, he was owed \$ [REDACTED] by the company. In August, he was additionally owed \$ [REDACTED] in salary and benefits, and he was paid \$ [REDACTED] that month in five payments (including the \$ [REDACTED] in question). At the end of August, he was then owed \$ [REDACTED].
- Jamal Ogbe: At the end of July, he was owed \$ [REDACTED] by the company. In August, he was additionally owed \$ [REDACTED] in salary and benefits, and he was paid \$ [REDACTED] in five payments (including the \$ [REDACTED] in question). At the end of August, he was then owed \$ [REDACTED].¹¹

Thus, the accounting demonstrates the following:

- On a monthly basis, U.S. Dry Cleaning added some amount for salary and benefits to the total it owed the four officers;
- From January through August 2009, U.S. Dry Cleaning made more than 60 payments, each described as "suspense," to these five officers, and deducted those payments from the balance owed; and

payments to these officers were labeled "Suspense" – including the 18 payments made in August 2009. Of greater significance is that for each "Suspense" payment throughout the ledger, U.S. Dry Cleaning reduced the balance owed by the amount of the payment.

¹⁰ MUR 6279, Supplemental Response at 4-14.

¹¹ This information was considered by the undersigned Commissioners in their decision in this matter; however, it has been redacted in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, and the Commission's Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) (explaining that materials exempt from disclosure under the FECA or FOIA will not be placed on the public record).

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- In August 2009, when the officers made their contributions, U.S. Dry Cleaning owed them a balance of salary and benefits, and those balances were far in excess of the amounts drawn.¹²

OGC said this matter presented a "close call," but recommended that the Commission find reason to believe that the Respondents violated the Act.¹³

II. ANALYSIS

The Act prohibits corporations from making, and corporate officers and directors from consenting to, contributions to Federal candidates.¹⁴ The Act also prohibits a person from making a contribution in the name of another person or knowingly permitting his or her name from being used to such an effect, and any candidate or political committee from knowingly accepting or receiving such contribution.¹⁵ Furthermore, it is a violation of Commission regulations for a person to knowingly help or assist any person in making a contribution in the name of another.¹⁶

In this matter, the facts demonstrate that U.S. Dry Cleaning did not make contributions in the names of the senior officers and their spouses. Rather, the response and supplemental documentation demonstrate that "[t]he funds [that U.S. Dry Cleaning] paid to these employees were earned wages."¹⁷ The detailed ledger of debts owed and payments made to these senior officers in 2009 shows that multiple payments were made to them during this time span, from of which appear to be the source of their contributions. But for every payment made, the balance due was reduced by a corresponding amount. In other words, U.S. Dry Cleaning was paying its already-existing obligations, not reimbursing contributions.

Moreover, individuals who make contributions with payments received for back wages are no different from individuals who make contributions from their regular wages. In both instances, the individuals are contributing their own money, not their employer's. Thus, the contributions from the employees of U.S. Dry Cleaning, made from payments received for back wages, were not contributions from U.S. Dry Cleaning.

¹² MUR 6279, Supplemental Response at 4-14.

¹³ MUR 6279, FGCR at 8 and 13-15. OGC also recommended that the Commission take no action at this time on the allegations regarding the Committee, but to be allowed to question it as a witness to the allegations. *Id.* at 13-14.

¹⁴ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)

¹⁵ 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b).

¹⁶ 11 C.F.R. § 110.4(b)(iii).

¹⁷ MUR 6279, Supplemental Response at 1.

Based on the documents submitted by the Respondents, we concluded that the funds used by the employees of U.S. Dry Cleaning to make contributions to the Vitter Committee were earned wages.¹⁸ This evidence sufficiently refutes the alleged statements of Ogbe in the *New Orleans Times-Picayune* article upon which the complaint relies (statements in an article published approximately eight months after the events at issue).¹⁹ This evidence also supports the Respondents' assertion that Ogbe was mistaken if he believed that the contributions were reimbursed with corporate funds. Therefore, the individual respondents' contributions were not corporate contributions in violation of 2 U.S.C. § 441b(a), nor were they made in the name of another in violation of 2 U.S.C. § 441f. In short, the payments that U.S. Dry Cleaning made to its senior officers in August of 2009 were just that—debt payments on salary due—and, therefore, no violation of the Act occurred.

III. CONCLUSION

For the foregoing reasons, we rejected OGC's recommendations to find reason to believe that Respondents violated the Act.



CAROLINE C. HUNTER
Vice Chair

1/28/11
Date



DONALD F. McGAHN II
Commissioner

1/28/11
Date



MATTHEW S. PETERSEN
Commissioner

1/28/2011
Date

¹⁸ This conclusion is consistent with prior enforcement matters in which the Commission has declined to second guess the accounting or bookkeeping decision of an entity or person. *See, e.g.*, MUR 5982 (Christine Jennings), Factual & Legal Analysis at 3-5 (the Commission dismissed a matter alleging, *inter alia*, that an entity's payroll taxes were untimely paid resulting in impermissible contributions to the entity because the issue of the timeliness of the payment of the entity's taxes is "beyond the scope of the FECA and the jurisdiction of the Commission.").

¹⁹ *See* MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1-2 ("[A] complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint.").

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