



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6621
American Hotel & Lodging Association, et al.)

STATEMENT OF REASONS
Commissioners CAROLINE C. HUNTER and MATTHEW S. PETERSEN

The complaint in this matter alleged that American Hotel & Lodging Association (“AHLA”), American Hotel & Lodging Association Political Action Committee (“HotelPAC”), and the Broadmoor Hotel, Inc., violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by improperly soliciting individuals outside of AHLA’s or its members’ restricted classes and failing to inform contributors about HotelPAC’s political purpose, among other allegations. HotelPAC conceded that improper solicitations were made but offered persuasive reasons why most of their conduct should not be penalized. Thus, we voted to accept a conciliation agreement with AHLA and HotelPAC in settlement of this matter,¹ and write to explain why we voted against some of the Office of the General Counsel’s earlier recommendations. Specifically, we disagreed with pursuing the allegations that AHLA, HotelPAC and Broadmoor violated 2 U.S.C. §§ 441b(b)(3)(B), (C) and 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(a) and (g) with respect to (1) HotelPAC’s 2010 event at the Broadmoor Golf Club and (2) the solicitations contained in AHLA’s *Lodging Magazine* and on AHLA’s website. We also note that, since first considering this matter, the Commission has issued guidance for trade associations and membership organizations that they generally should not include a PAC solicitation in membership packets for potential new members.

The 2010 event consisted of a golf tournament, dinner and a silent-auction to benefit HotelPAC.² Broadmoor members were invited to participate in this annual event so long as they

¹ With respect to allegations regarding a 2011 fundraiser, we voted to find reason to believe and to accept a signed conciliation agreement regarding findings that AHLA and HotelPAC violated 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1) by soliciting contributions to HotelPAC from persons who were not in the restricted class of either AHLA or the Broadmoor, one of AHLA’s members, and 2 U.S.C. § 441b(b)(3)(B), (C) and 11 C.F.R. § 114.5(a)(3), (4) because the Broadmoor’s members were not informed of the political purpose of HotelPAC and their right to refuse to contribute without reprisal. See Certifications of July 9, 2013, July 25, 2013, and Oct. 17, 2013. We also concurred with recommendations to dismiss specific allegations with regard to a 2012 fundraiser and all allegations against the Broadmoor. See Certification of July 9, 2013.

² AHLA Resp. at 2.

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agreed to first become members of AHILA.³ After arriving at the event, club members were required to complete an AHILA membership form and become complimentary members of AHILA for three months.⁴ According to AHILA, 32 Broadmoor members attended this event, became members of AHILA, and paid \$19,425 at the HotelPAC event.⁵ Because AHILA and HotelPAC determined this money resulted from improper solicitations, AHILA kept these funds in an AHILA administrative account separate from HotelPAC's bank account.⁶

In short, the Broadmoor members that were invited to the event were notified they must become AHILA members (which they did) before they could participate in the fundraiser; and AHILA and HotelPAC addressed any potential violation by depositing all funds from the Broadmoor invitees into an AHILA administrative account. For these reasons, as well the relatively low amount at issue, we voted against pursuing enforcement as to this event.⁷

With respect to AHILA's *Lodging Magazine* and website, the complainant alleges (1) that she and other Broadmoor members received unrequested copies of the magazine, which contained solicitations for contributions and (2) that AHILA's public website also contained solicitations. AHILA and HotelPAC contend that only a *de minimis* number of non-members received copies of the magazine or other materials containing solicitations, and that the distribution was permissible under prior Commission advisory opinions.⁸ Subsequent to the complaint, AHILA changed its website to remove an online contribution option.⁹ For these reasons, and because Commission resources were better spent resolving the matter with respect to the 2011 event, we voted against finding reason to believe a violation occurred here.¹⁰

The rules relating to solicitations in these circumstances have not been as clear as we would like. Because the Act charges the Commission to encourage voluntary compliance, the Commission has an obligation to provide clear notice of what the law requires. And we generally should not wait for an enforcement action to provide that notice. In this matter, AHILA and HotelPAC stated they made improper solicitations;¹¹ but it seems the Commission's lack of clarity on this point led to some confusion and this likely contributed, at least in part, to the

³ Broadmoor Resp. at 2.

⁴ *Id.* at 3.

⁵ AHILA Resp. at 2.

⁶ *Id.*

⁷ See *Heckler v. Chaney*, 740 U.S. 821, 831-835 (1985).

⁸ AHILA Resp. at 4. The complainant was a member of AHILA in early 2012 and thus became eligible to receive solicitations. *Id.* at 3.

⁹ See www.ahla.com/hotelpac (visited Jan. 17, 2013).

¹⁰ See *Heckler*, 740 U.S. at 831-835.

¹¹ AHILA Supp. Resp. at 1.

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problems we found here. Since first considering this matter, the Commission published guidance in the July 2013 issue of *Record* making clear that PAC solicitations should not be included in membership packets for potential members because they do not yet satisfy the conditions for membership in an association and, thus, are not within the appropriate restricted class.¹²


CAROLINE C. HUNTER
Commissioner

11/19/2013
Date


MATTHEW S. PETERSEN
Commissioner

11/19/2013
Date

¹² *The Record*, July 2013, available at <http://www.fec.gov/pages/fecrecord/2013/july/tradesolicitations.shtml>.

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