

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)	
)	
Georgianna Oliver)	MUR 6102
Oliver for Congress and Clayton E. Woodrum, in)	
his official capacity as Treasurer)	
EverGreen Solutions, Inc.)	

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FEDERAL ELECTION COMMISSION SECRETARIAT

29044252220

STATEMENT OF REASONS

Vice Chairman MATTHEW S. PETERSEN, and Commissioners CYNTHIA L. BAUERLY, CAROLINE C. HUNTER and DONALD F. MCGAHN II

I. INTRODUCTION

This matter involves \$441,548.62 loaned by Georgianna Oliver to her authorized committee in connection with her 2008 campaign for the First District of Oklahoma House seat. The complaint alleges that at least \$260,000 of the loans were improper because the money was neither "personal funds" as defined in the Commission's regulations nor funds loaned by a bank. The complaint cites to several news articles stating that Oliver had obtained some of the money for her loans from a business she owns, EverGreen Solutions, Inc. The complaint also alleges that Oliver failed to disclose in her disclosure reports the source of the loans and failed to adequately disclose the purpose of disbursements.

Oliver, her authorized committee, Oliver for Congress and Clayton E. Woodrum, in his official capacity as Treasurer, and EverGreen Solutions (collectively "respondents"), filed separate responses stating that (1) Oliver's loans to her committee were made with personal funds obtained from the candidate's salary as Director of EverGreen Solutions, distributions from the IRA accounts listed in her House Financial Disclosure Statement, and distributions made to her as sole shareholder of EverGreen Solutions pursuant to its Bylaws; (2) the FEC

reports properly disclosed information about the loans; and (3) the disbursement descriptions were adequate.¹ In their sworn responses, Respondents stated that the distributions were made in accordance with EverGreen's Bylaws, but they did not provide copies of the Bylaws or other information verifying this assertion.

Based on the complaint, the responses, and publicly available information cited therein, we dismiss as a matter of prosecutorial discretion the allegations that the respondents violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended (the "Act") by knowingly accepting and making prohibited corporate contributions, the allegation that the committee violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(d) and 104.11(a) by failing to disclose the source of the loans in its FEC disclosure reports, and the allegation that the committee violated 2 U.S.C. § 434(b)(5) by failing to properly describe the purpose of disbursements.

II. FACTUAL BACKGROUND

Georgianna Oliver, a 2008 candidate in Oklahoma's First Congressional District, filed her Statement of Candidacy on June 10, 2008. Between July and November 2008, Oliver made the following loans to her authorized committee:

LOAN DATE	AMOUNT
07/11/08	\$51,000.00
07/17/08	\$15,000.00
08/18/08	\$11,000.00
08/29/08	\$3,540.42
09/19/08	\$260,000.00
09/25/08	\$25,000.00
09/30/08	\$4,600.00
09/30/08	\$2,100.00
10/15/08	\$50,000.00
10/17/08	\$6,000.00
11/03/08	\$2,720.37

¹ EverGreen Solutions, Inc., also responded that the complaint does not allege that EverGreen violated the Act.

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LOAN DATE	AMOUNT
11/04/08	\$1,613.70
11/04/08	\$2,500.00
11/07/08	\$4,800.00
11/10/08	\$2,662.96
11/24/08	\$106.50
11/24/08	\$1,000.00
11/24/08	\$2,000.00
11/24/08	\$504.66
TOTAL	\$441,548.62

The Committee's October 2008 Quarterly and 12-Day Pre-General Reports disclosed that Oliver made the loans but did not specify whether the loans were made from personal funds.

The complaint alleges that the loans Oliver made derived from assets to which she did not have a legal right at the time she became a candidate, and thus were not from personal funds. Specifically, the complaint cites to news articles to allege that approximately half the total amount she loaned to her committee came from the sale of AptBudget, a business that the candidate did not list as an asset in her August 2008 House of Representatives Financial Disclosure Statement ("House Financial Statement"). Because Oliver was required to list all assets in the House Financial Statement, the complaint states that she did not have any legal right or title to AptBudget at the time of candidacy. Thus, the complaint states that by using funds from this asset, she made at least one prohibited loan totaling \$260,000. The news articles attached to the complaint link AptBudget to Oliver's closely held corporation, EverGreen Solutions. See Complaint at 2 and Exh. A.

In a sworn response, Oliver asserts that the funds used to loan money to her committee came from: (1) IRA accounts valued on her House Financial Statement from \$1,001-\$15,000; (2) distributions made to her as sole shareholder of EverGreen Solutions, in accordance with the Bylaws; and (3) salary from EverGreen Solutions, disclosed as \$423,914 for 2007 and \$193,419

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through August 16, 2008. *See* Oliver Response; Oliver Committee Response; EverGreen Solutions Response; House Financial Statement.

Oliver is the director and sole shareholder of EverGreen Solutions, an S corporation incorporated in the District of Columbia with \$1 million to \$5 million in assets. *See* Oliver Response; EverGreen Solutions Response; House Financial Statement at 3 (attached to the Complaint as Ex. B). Oliver also is the sole member of the EverGreen Board of Directors and, according to the Committee, may withdraw funds from EverGreen at her discretion. *See* EverGreen Articles of Incorporation; Oliver Committee Response.

In September 2008, shortly before Oliver loaned \$260,000 to her committee, a software firm, AptBudget, was sold to RealPage, Inc., a Texas-based property management software company, for \$400,000. *See* Jim Myers, *Congressional Hopeful Clarifies Finances*, TULSA WORLD, Oct. 17, 2008, at A13. According to Oliver, and as reported in an article attached to the complaint:

- AptBudget² owed debt to EverGreen Solutions (*i.e.*, EverGreen held the debt as an account receivable).
- Proceeds from the sale of AptBudget to RealPage went toward the amount owed to EverGreen Solutions, although the amount of the receivable held by Evergreen Solutions exceeded the sale price.
- Following the sale of AptBudget and the payment of its debt, EverGreen Solutions paid a cash distribution to her as sole shareholder pursuant to its Bylaws.

See Oliver Response; EverGreen Solutions Response; *see also* Jim Myers, *Congressional*

Hopeful Clarifies Finances, TULSA WORLD, Oct. 17, 2008, at A13.

² The precise relationship between EverGreen Solutions and AptBudget is unclear. Although some press reports characterize AptBudget as a proprietary software program designed by EverGreen Solutions, at the time she filed her House Financial Statement, Oliver disclosed that she was the President of AptBudget, LLC, an Oklahoma limited liability company. *See* House Financial Statement at 4. Oliver, however, did not disclose assets for this entity, later asserting that the valuation of EverGreen Solutions included the value of AptBudget's assets by virtue of the debt AptBudget owed to EverGreen. *See* Oliver Response; *cf.* Jim Myers, *Congressional Hopeful Clarifies Finances*, TULSA WORLD, Oct. 17, 2008, at A13 (reporting that Oliver explained she did not list AptBudget as an asset in her House Financial Statement because AptBudget had no value in August 2008).

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III. LEGAL ANALYSIS

A. Source of Oliver's Loans

Candidates may make unlimited expenditures from personal funds. 11 C.F.R. § 110.10. "Personal funds" are defined at 11 C.F.R. § 100.33(a) as including "[a]mounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had (1) legal and rightful title; or (2) an equitable interest." Corporations are prohibited from making a contribution in connection with any federal election. 2 U.S.C. § 441b(a).

Although the complaint alleges that the funds used by Oliver came from the sale of AptBudget, the available information indicates that AptBudget owed a debt to EverGreen, and that the proceeds from the sale of AptBudget paid the debt owed to EverGreen. See Oliver Response; Oliver Committee Response; see also Jim Myers, *Congressional Hopeful Clarifies Finances*, TULSA WORLD, Oct. 17, 2008, at A13. Accounts receivable are considered assets, see, e.g., *Auerbach v. Frank*, 685 A.2d 404, 405 (D.C. 1996), so the debt AptBudget owed EverGreen was EverGreen's asset. In turn, EverGreen appears to be Oliver's asset, so the monies EverGreen conveyed to Oliver from the sale of AptBudget could be monies derived from that asset, i.e., personal funds, if the conveyance was proper. Thus, the complaint raises the issue of whether Oliver improperly used EverGreen corporate funds to make loans to her committee. See 2 U.S.C. § 441b(a).

The key issue is whether the money Oliver withdrew from EverGreen became her personal funds. Although Oliver is the sole owner and shareholder of EverGreen, the funds of an S corporation are corporate in nature until they are properly distributed. See *United States v. Falcone*, 934 F.2d 1528, 1547-48 (11th Cir. 1991), *reh'g granted and opinion vacated on other*

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grounds. 939 F.2d 1455 (11th Cir. 1991), *opinion reinstated on reh'g on other grounds*. 960 F.2d 988 (11th Cir. 1992) (applying Florida law) (“[A]lthough the shareholders of a subchapter S corporation report, pay taxes on, and take deductions for a pro rata share of the corporation’s income and losses on their personal tax returns, the corporation retains its income until the board of directors, in its discretion, declares a dividend.”). D.C. law provides that a corporation’s board of directors authorizes dividends and distributions. *See* D.C. Business Corporation Act § 29-101.40 (“The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares ... subject to the following provisions.”). Such provisions include that dividends may not be paid contrary to any provision in the articles of incorporation or that would cause the corporation to become insolvent. *See* 29-101.40(1) and (6). *See generally* 11 Fletcher Cyclopedia of the Law of Corporations § 5349 (2008) (“Unless otherwise provided by agreement, the authority to declare dividends, whether payable in cash, property or shares, is solely vested in the board of directors, and not in the shareholders nor in the corporate officers.”).

Oliver attested under oath in her response that the distribution of monies to her was proper and in accordance with the EverGreen Solutions Bylaws.³ Given this sworn statement, the absence of any information to the contrary, and the fact that Oliver is the sole shareholder and sole member of the EverGreen Solutions Board of Directors, we dismiss this allegation as a matter of prosecutorial discretion. *See Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

B. Failure to Report Source of Funds

The complaint also alleges that the committee failed to report the source of the loans made by the candidate. In the FEC disclosure reports, the committee disclosed that Oliver made loans to her committee. The reports do not specifically state that the source of the loans was

³ A copy of the Bylaws was not provided to the Commission.

personal funds as opposed to bank loans. Nevertheless, because the disclosure reports identified Georgianna Oliver as the source of the loans, we dismiss the allegation that the committee violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. §§ 104.3(d) and 104.11(a) by failing to report the source of the candidate's loans as a matter of prosecutorial discretion. *See Heckler*, 470 U.S. at 831.

C. Failure to Disclose Purpose of Disbursements

Finally, the complaint alleges that the committee failed to adequately disclose the purpose of disbursements. The complaint does not cite to any particular disbursement entry, but attaches five pages of Schedule B itemized disbursements from the Oliver Committee's Pre-General Report, listing descriptions including "salary & reimbursements," "campaign signs," "survey and consulting fees," "tv ads," "reimbursements," "salary," "stamps," and "ca[t]tering for fundraiser." *See* Complaint Exh. D. Of these, the committee acknowledges that one entry for \$840 labeled as "reimbursements" included an inadequate purpose and should have stated that it was a reimbursement for travel expenses. *See* Oliver Committee Response; *see also* Examples of Inadequate Purposes, *at*


http://www.fec.gov/law/policy/purposeofdisbursement/inadequate_purpose_list_3507.pdf

(March 5, 2007). Based upon the minimal amount at issue, we dismiss the allegation that the


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committee violated 2 U.S.C. § 434(b)(5) by failing to adequately report the purpose of disbursements as a matter of prosecutorial discretion. *See Heckler*. 470 U.S. at 831.


9/28/09
Date


Matthew S. Petersen
Vice Chairman


9/28/2009
Date


Cynthia L. Bauerly
Commissioner

9/28/2009
Date


Caroline C. Hunter
Commissioner

9/28/09
Date


Donald F. McGahn II
Commissioner

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