

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE

495

DATE FILMED 2-10-03

CAMERA NO. 1

CAMERAMAN S.E.G.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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COMMISSION
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2003 JAN -6 A 10:04

January 6, 2003

SENSITIVE

MEMORANDUM

TO: THE COMMISSION

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

ALISON L. DOONE
DEPUTY STAFF DIRECTOR

FROM: SHAWN WOODHEAD WERTH
REVIEWING OFFICER
OFFICE OF ADMINISTRATIVE REVIEW

SUBJECT: FINAL DETERMINATION RECOMMENDATION IN AF# 495 -
GIORDANO FOR UNITED STATES SENATE AND THOMAS
ARIOLA, AS TREASURER (C00353862)

On November 2, 2001, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Giordano for United States Senate and Thomas Ariola, as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2001 Mid Year Report. Because the respondents had not filed the report at the time of the Commission's RTB finding, the estimated level of activity was used to calculate the civil money penalty. Therefore, the Commission also made a preliminary determination on that same date that the civil money penalty was \$8,000 based on the schedule of penalties at 11 C.F.R. § 111.43.

On February 11, 2002, the Commission received the respondents' written response and supporting documentation ("challenge"). After reviewing the respondents' challenge, the Reviewing Officer's recommendation dated December 6, 2002 was forwarded to the Commission. A copy was simultaneously forwarded to the respondents. Based on the evidence provided that the records needed to prepare and file the Mid Year Report were seized by the Federal Bureau of Investigations and the United States Department of Justice between July 22 and July 31, 2001, the Reviewing Officer recommended that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and waive the civil money penalty because they have shown that extraordinary circumstances existed, that were beyond their control, were for a duration of at least 48 hours and which prevented them from filing the Mid Year Report in a timely manner.

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in the respondents' challenge or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The respondents' written response was received via facsimile on December 20, 2002 and is attached for your review.

OAR Recommendations

- (1) Make a final determination in AF# 495 that Giordano for United States Senate and Thomas Ariola, as Treasurer, violated 2 U.S.C. § 434(a) and waive the \$8,000 civil money penalty because the respondents have demonstrated the existence of extraordinary circumstances that were beyond their control and that were for a duration of at least 48 hours; and
- (2) Send the appropriate letter.

Staff Assigned: Jennifer H. Boyt

Attachment

Wenth



FEDERAL ELECTION COMMISSION

Washington, DC 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL: Monday, January 06, 2003 11:00

BALLOT DEADLINE: Thursday January 09, 2003 4:00

COMMISSIONER: MASON, McDONALD, SMITH, THOMAS, TONER, WEINTRAUB

SUBJECT: **Final Determination Recommendation in AF 495 – Giordano
For United States Senate and Thomas Ariola, as treasurer
(C00353862). Memorandum from The Reviewing Officer,
Office of Administrative Review dated January 6 2003.**

- ☐ I approve the recommendation(s)
- ☐ I object to the recommendation(s)
- ☐ I abstain from voting on the recommendation(s)
- ☐ I am recused from voting on the recommendation(s)
- ☐ I am not voting on this tally.

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

DATE: _____

SIGNATURE: _____

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
)
Final Determination Recommendation) Agenda Document
in AF #495 - Giordano for United) No. X03-04
States Senate and Thomas Ariola,)
as treasurer (C00353862))

CERTIFICATION

I, Darlene Harris, recording secretary for the Federal Election Commission executive session on January 14, 2003, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to the above-captioned matter:

1. Make a final determination in AF #495 that Giordano for United States Senate and Thomas Ariola, as treasurer, violated 2 U.S.C. § 434(a) and waive the \$8,000 civil money penalty because the respondents have demonstrated the existence of extraordinary circumstances that were beyond their control and that were for a duration of at least 48 hours; and
2. Send the appropriate letter, as recommended in the Office of Administrative Review's memorandum dated January 6, 2003.

(continued)

Federal Election Commission
Certification for AF #495
January 14, 2003

Page 2

Commissioners Mason, McDonald, Smith, Thomas, Toner,
and Weintraub voted affirmatively for the decision.

Attest:

January 14, 2003
Date

Darlene Harris
Darlene Harris
Deputy Secretary of
the Commission

THIS IS THE END OF ADMINISTRATIVE FINE CASE

495

DATE FILMED 2-10-03 CAMERA NO. 1

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