

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE

# 563

DATE FILMED 3/18/03

CAMERA NO. 4

CAMERAMAN SES

2003.03.18.14.31.00



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2002 NOV -5 P 4: 55

November 5, 2002

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#563 -  
McNARY FOR CONGRESS COMMITTEE AND ANDREW N.  
BAUR, AS TREASURER (C00343319)

**SENSITIVE**

On June 14, 2002, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that the McNary for Congress Committee and Andrew N. Baur, as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2001 Year End 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 \$11,375.00 based on the schedule of penalties at 11 C.F.R. § 111.43.

On July 24, 2002, the Commission received the respondents' written response and supporting documentation ("challenge"). After reviewing the respondents' challenge, the Reviewing Officer recommended in a report to the Commission dated October 18, 2002 that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$11,375.00 because the respondents submitted no evidence that a factual error was made, that the civil money penalty was miscalculated at RTB or that extraordinary circumstances existed which prevented them from filing the Year End Report in a timely manner. A copy of the Reviewing Officer's recommendation was simultaneously forwarded to the respondents.

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). On October 31, 2002, the respondents filed a Year End Report covering the period August 1 through December 31, 2001. The report was filed 273 days late and is considered not filed for purposes of the civil money penalty calculation. It discloses no receipts and \$300 in disbursements.

Had the report been filed prior to the Commission's RTB finding, the civil money penalty would have been \$1,575.00 because the respondents have three previous violations (see AF #125, AF #418 and AF #501). The Reviewing Officer, therefore, recommends that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and, based on the level of activity disclosed in the Year End Report, reduce the RTB civil money penalty to \$1,575.00.

#### **OAR Recommendations**

- (1) Make a final determination in AF# 563 that the McNary for Congress Committee and Andrew N. Baur, as Treasurer, violated 2 U.S.C. § 434(a) and, based on the level of activity on the Year End Report (\$300.00), assess a civil money penalty of \$1,575.00 (reduced from the RTB civil money penalty amount of \$11,375.00); and
- (2) Send the appropriate letter.

Reviewing Analyst: Jennifer H. Boyt

Attachment

Werth



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**SENSITIVE**

DATE & TIME OF TRANSMITTAL: Wednesday, November 06, 2002 11:00

BALLOT DEADLINE: Tuesday, November 12, 2002 4:00

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

SUBJECT: **Final Determination Recommendation in AF #563  
McNary for Congress Committee and Andrew N.  
Baur, as treasurer. Memorandum from the  
Reviewing Officer dated November 5, 2002.**

- ( ) 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 )  
 )  
McNary for Congress Committee and ) AF #563  
Andrew N. Baur, as Treasurer - )  
Final Determination Recommendation. )

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on November 12, 2002 the Commission decided by a vote of 5-1 to take the following actions in AF #563:

1. Make a final determination in AF #563 that the McNary for Congress Committee and Andrew N. Baur, as Treasurer, violated 2 U.S.C. § 434(a) and, based on the level of activity on the Year End Report (\$300.00), assess a civil money penalty of \$1,575.00 (reduced from the RTB civil money penalty amount of \$11,375.00).
2. Send the appropriate letter, as recommended in the Reviewing Officer's Memorandum dated November 5, 2002.

(Continued)

23-09-254-3104

Federal Election Commission  
Certification for AF #563  
November 12, 2002

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

Commissioner Smith dissented.

November 13, 2002  
Date

Attest:

Mary W. Dove  
Mary W. Dove  
Secretary of the Commission

Received in the Secretariat: Tues., Nov. 05, 2002 4:55 p.m.  
Circulated to the Commission: Wed., Nov. 06, 2002 11:00 a.m.  
Deadline for vote: Tues., Nov. 12, 2002 4:00 p.m.

lrd

NOV 13 2002 11:00 AM

THIS IS THE END OF ADMINISTRATIVE FINE CASE

# 563

DATE FILMED 3/18/03 CAMERA NO. 4

CAMERAMAN EEJ

23.09.254.3106