



Federal Election Commission
Washington, DC 20463

Case Number ADR 127
Source Audit 01-43
Case Name Democratic State Central Committee
of Maryland and Gary Gensler, Treasurer

NEGOTIATED SETTLEMENT

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Following review of the matter, and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended, ("FECA") and resolve this matter, the Commission entered into negotiations with Neil Reiff, Esq., representing the Democratic State Central Committee of Maryland and Gary Gensler, Treasurer ("Respondents"). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and Respondents addressed the issues raised in this referral. The parties agree to resolve the matter according to the following terms:

1. The Commission entered into this agreement as part of its responsibility for administering the FECA, and in an effort to promote compliance on the part of Respondents. The Commission's use of alternative dispute resolution procedures ("ADR") is authorized in "The Administrative Dispute Resolution Act of 1996," 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. Respondents voluntarily enter into this agreement with the Commission.
3. An audit of the contributions during the 2000 election cycle revealed that Respondents received contributions in excess of the limitations from seven individuals and one political action committee totaling \$19,125. Of this amount, excessive contributions totaling \$6,500 were transferred to a non-federal account, though not in a timely manner and the contributors were not advised of the transfer. Respondents received Requests for Additional Information (RFAI) from the Commission's Reports Analysis Division related to apparent excessive contributions. Audit staff noted that although a refund of the \$6,500 would normally be warranted, the Commission did not require refunds of these contributions because the language in the RFAI letters may not have fully clarified the requirements for transfers of excessive contributions. Of the remaining amount, Respondents provided documentation that demonstrated contributions totaling \$7,500 were either not excessive (\$2,500), transferred to a non-federal account (\$5,000), or refunded (\$5,125).

4. Sections 441a(a)(1)(C) and (2)(C) of Title 2 of the United States Codes state that no person and no multicandidate committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000. In addition, no political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. 2 U.S.C. § 441a(f). The FECA defines "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). The regulations define "anything of value" to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).
5. The Code of Federal Regulations states, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer may request reattribution of the contribution by the contributor in accordance with 11 C.F.R. § 110.1(k). If a reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).
6. Any contribution which appears to be illegal under 11 C.F.R. § 103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. 11 C.F.R. § 103.3(b)(4).
7. Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person and informs the contributor that he or she may request a return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.
8. Respondents contend the Commission's regulations do not expressly address the situation where contributions received by a state party committee are allocated between federal and non-federal accounts or when excessive contributions are transferred to a state party committee's non-federal account. Respondents contend they made a good

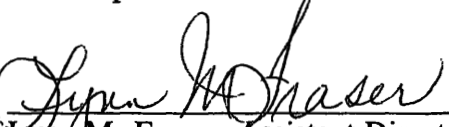
faith effort to correct these problems as soon as they were discovered, which, they further contend, was before the Commission's audit was commenced.

9. Respondents, in an effort to avoid a similar situation in the future, agree to: (a) have a staff person attend a Commission sponsored training seminar; and (b) transfer the excessive portion of any contribution within 60 days of receipt, notify the donor that such a transfer is being made, and offer the donor the option of a refund.
10. The parties agree that if Respondents fail to comply with the terms of this settlement, the Commission may undertake civil action in the U.S. District Court for the District of Columbia to secure compliance.
11. This agreement shall become effective on the date signed by all parties and approved by the Commission. Respondents shall comply with term (a) of the settlement within twelve months from the effective date of this agreement.
12. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 127 (Audit 01-43), and effectively resolves this matter. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable.

FOR THE COMMISSION:

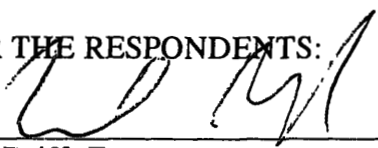
Allan D. Silberman, Director
Alternative Dispute Resolution Office

By:


Lynn M. Fraser, Assistant Director
Alternative Dispute Resolution Office

9/29/03
Date Signed

FOR THE RESPONDENTS:


Neil Reiff, Esq.
Representing Democratic State Central Committee
of Maryland and Gary Gensler, Treasurer

9/12/03
Date Signed