



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 0213

Date Filmed 1/9/87 Camera No. --- 2

Cameraman AS

87040622445

FEDERAL ELECTION COMMISSION

assignment memoranda, routing slips, blue routing  
cards, 12 day report and comments, miscellaneous  
internal memoranda.

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- |  |   |
|--|---|
| <input type="checkbox"/> (1) Classified Information                                | <input type="checkbox"/> (6) Personal privacy                             |
| <input checked="" type="checkbox"/> (2) Internal rules and practices               | <input type="checkbox"/> (7) Investigatory files                          |
| <input type="checkbox"/> (3) Exempted by other statute                             | <input type="checkbox"/> (8) Banking Information                          |
| <input type="checkbox"/> (4) Trade secrets and commercial or financial information | <input type="checkbox"/> (9) Well Information (geographic or geophysical) |
| <input checked="" type="checkbox"/> (5) Internal Documents                         |   |

Signed Lawrence E. Tobey  
 date December 17, 1986

FEC 9-21-77

TJW  
 1/7/87

87040522446



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Joseph Guarino for Congress  
and Peter G. Isaacs, as  
treasurer

MUR 2213

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 19, 1986, the Commission decided by a vote of 6-0 to take the following actions in MUR 2213:

1. Take no further action against the Joseph Guarino for Congress Committee, and Peter G. Isaacs, as treasurer, as recommended in the General Counsel's Report signed November 17, 1986.
2. Approve and send the letter, as recommended in the General Counsel's Report signed November 17, 1986.
3. Close the file.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

11-19-86

Date

Marjorie W. Emmons

Marjorie W. Emmons  
Secretary of the Commission

Received in Office of Commission Secretary:	Mon., 11-17-86,	11:23
Circulated on 48 hour tally basis:	Mon., 11-17-86,	4:00
Deadline for vote:	Wed., 11-19-86,	4:00

87040522447

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Joseph Guarino for Congress and )  
Peter G. Isaacs, as treasurer )

MUR 2213

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 25, 1986, the Commission decided by a vote of 5-0 to take the following actions in MUR 2213:

1. Find reason to believe that the Joseph Guarino for Congress Committee, and Peter G. Isaacs, violated 2 U.S.C. § 441d(a)(1).
2. Approve and send the letter to Respondents, as recommended in the First General Counsel's Report signed September 22, 1986.
3. Approve and send the Questions to Respondents, as recommended in the First General Counsel's Report signed September 22, 1986.

Commissioners Elliott, Harris, Josefiak, McDonald and McGarry voted affirmaitvely for this decision; Commissioner Aikens did not cast a vote.

Attest:

9-25-86

Date

Marjorie W. Emmons

Marjorie W. Emmons  
Secretary of the Commission

Received in Office of Commission Secretary:	Tues.,	9-23-86,	10:15
Circulated on 48 hour tally basis:	Tues.,	9-23-86,	4:00
Deadline for vote:	Thurs.,	9-25-86,	4:00

87040522448





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 23, 1986

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Stanley S. Weithorn, Esquire  
Baer, Marks & Upham  
805 Third Avenue  
New York, NY 10022

RE: MUR 2213

Dear Mr. Weithorn:

The Federal Election Commission has reviewed the allegations of your complaint dated July 28, 1986 and determined on the basis of the information provided in your complaint and information provided by the Respondents that there is no reason to believe that the Guarino for Congress committee, and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act").

Accordingly, the Commission has decided to close its file in this matter. The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

This Office regrets the fact that this notification was delayed in reaching you. This letter was inadvertently not sent at the time this case was closed on November 18, 1986. We apologize for any inconvenience this may have caused.

Sincerely,

Charles N. Steele  
General Counsel

BY:   
Lawrence M. Noble  
Deputy General Counsel

Enclosure:  
General Counsel's Report

87040522449



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 21, 1986

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Nicholas J. Donohue, Esquire  
Martin, Van De Walle,  
Guarino & Donohue  
17 Barstow Road  
Great Neck, NY 11021

RE: MUR 2213  
Joseph Guarino for Congress  
and Peter G. Isaacs, as  
treasurer

Dear Mr. Donohue:

On September 29, 1986, the Commission notified you that it had found reason to believe that your clients, the Joseph Guarino for Congress committee, and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, and the response which you submitted dated October 16, 1986, on November 18, 1986, the Commission determined to take no further action in this matter and closed its file.

The file in this matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of an expenditure to finance a communication expressly advocating the election or defeat of a clearly-identified candidate without the required disclaimer statement appears to be a violation of 2 U.S.C. § 441d(a)(1). The Commission specifically rejects your contention, expressed in your letter of October 11, 1986 and elsewhere, that "the document in question gave, on its face, ample notice to the reader of its source." On the contrary, the document in question failed to satisfy the notice requirement of 2 U.S.C. § 441d(a)(1). Your clients should take immediate steps to ensure that this does not occur in the future.

87040522450

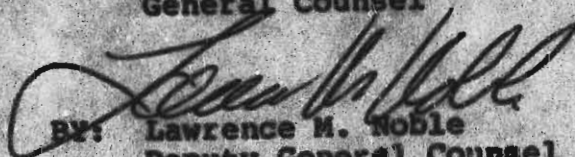


Nicholas J Donohue  
Page 2

If you have any questions, please direct them to Laurence E. Tobey, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele  
General Counsel

  
BY: Lawrence M. Noble  
Deputy General Counsel

87040522451

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

RECEIVED  
OFFICE OF THE FEC  
COMMISSION SECRETARY

In the Matter of )  
Joseph Guarino for Congress, )  
and Peter G. Isaacs, as )  
treasurer )

MUR 2213

86 NOV 17 All : 23

**GENERAL COUNSEL'S REPORT**

**I. BACKGROUND**

On September 25, 1986, the Commission found reason to believe that the Joseph Guarino for Congress committee, and Peter G. Isaacs, as treasurer (hereinafter, "Respondents") violated 2 U.S.C. § 441d(a)(1) by failing to include the required disclaimer statement on a piece of campaign literature. The Commission approved written questions to be sent to Respondents to establish the number of pieces of literature which were distributed, the duration of time the literature was before the public, and the cost of producing the literature. The questions were sent with the notification of the Commission's reason to believe finding on September 29, 1986.

On October 22, 1986, this Office received Respondents' answers to the Commission's questions. Attachment I. Through counsel, Respondents requested that the matter be dismissed. In the alternative, Respondents requested pre-probable cause conciliation.

Respondents stated that 3,000 copies of the leaflet (entitled "Shoreham Advisory") were printed which lacked the required disclaimer statement, and approximately 500 copies were distributed before the leaflet was recalled. Respondents

87040522452



further stated that the cost of printing all 3,000 copies of the "Shoreham Advisory" was \$175.12, and that the portion of the cost which is allocable to the leaflets which were distributed without the required disclaimer statement was approximately \$29.19.

Respondents further stated that all copies of the "Shoreham Advisory" were printed at one time, on or about July 11, 1986. No additional copies of the "Shoreham Advisory" were produced. Respondents stated that on or about July 12, 1986, some copies of the "Shoreham Advisory" lacking the required disclaimer statement were distributed to the public. Respondents stated that on or about July 14 or 15, they became aware that the leaflets then being distributed lacked the required disclaimer statement. Respondents stated that they "immediately" called the two volunteer coordinators who were distributing the leaflets and instructed them to immediately cease distribution and return all remaining copies to the committee's headquarters in Port Washington, New York. The committee stated that approximately 2,500 copies of the "Shoreham Advisory" were returned. The committee stated that the returned leaflets were then stamped with a rubber stamp containing the required disclaimer.

## II. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (hereinafter, "the Act") provides that whenever any person makes

87040522453

an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate or its agents, shall clearly state that the communication has been paid for by such authorized political committee. 2 U.S.C. § 441d(a)(1).

In prior enforcement cases, the Commission has taken no further action after a finding of reason to believe where the number of documents lacking the required disclaimer statement was small, or where the expenditure for the production or distribution of the documents was not large, or where the respondent committee took prompt action to halt the distribution of the documents and to recover the unused documents. See, e.g., MUR 2173 and cases cited therein.

Given that approximately 500 copies of the "Shoreham Advisory" were distributed to the public, that the expenditure for the copies which lacked the required disclaimer statement and reached the public was approximately \$29.19, that the Respondent committee immediately instructed its volunteer coordinators to cease distribution and recover the leaflets, and that 2,500 of 3,000 leaflets were recovered and withdrawn from circulation, this Office recommends that the Commission take no further action against the Joseph Guarino for Congress committee, and Peter G. Isaacs, as treasurer.

87040522454



### III. RECOMMENDATIONS

1. Take no further action against the Joseph Guarino for Congress committee, and Peter G. Isaacs, as treasurer.
2. Approve and send the attached letter.
3. Close the file.

Charles N. Steele  
General Counsel

Date

11/17/86

BY:

Lawrence M. Noble  
Deputy General Counsel

#### Attachments

- I. Letter from Respondents
- II. Proposed letter to Respondents

87040522455

**MARTIN, VAN DE WALLE, GUARINO & DONOHUE**

ATTORNEYS AT LAW  
17 BARSTOW ROAD  
GREAT NECK, N. Y. 11021

516 485-5100

JULES MARTIN  
CHARLES R. VAN DE WALLE  
JOSEPH A. GUARINO  
NICHOLAS J. DONOHUE  
STEPHEN R. MANDRACCHIA  
JAMES H. McGAHAN

October 16, 1986

Laurence E. Tobey, Esq.  
Federal Election Commission  
999 East Street, N.W.  
Washington, D.C. 20463

Re: MUR 2213  
Joseph Guarino for Congress Committee,  
and Peter G. Isaacs, as treasurer

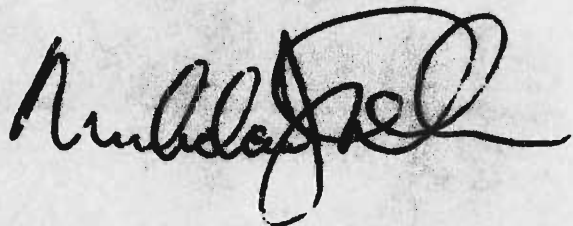
Dear Mr. Tobey:

On behalf of Joseph Guarino for Congress and Peter G. Isaacs, as treasurer, I respond to the Federal Election Commission's letter of September 29, 1986, which was received on October 3, 1986.

For the reasons set forth in our previous submissions, as supplemented by the enclosed responses to the questions which have been promulgated by the Federal Election Commission, we submit that the Commission should make no finding of probable cause or, alternatively, should terminate these proceedings. If there was a technical violation of the subject statute, that violation was inadvertent, was de minimis in nature and was speedily rectified when brought to light. Moreover, the document in question gave, on its face, ample notice to the reader of its source.

Nevertheless, we are amenable to entering into negotiations directed towards reaching a conciliation agreement prior to any finding of probable cause being made. We request that we be contacted for that purpose.

Very truly yours,



NJD/ark  
Encl.  
Certified Mail  
Return Receipt Requested  
P 273 573 624

87040522456

CCC# 1303  
21 P1: 59

12:19 10/16/86



ANSWERS OF GUARINO FOR CONGRESS  
COMMITTEE AND PETER G. ISAACS, AS  
TREASURER, TO QUESTIONS PROMULGATED  
BY THE FEDERAL ELECTION COMMISSION  
RE: MUR 2213

Ques. 1. Please state the number of copies of the leaflet lacking the required disclaimer statement which reached the public.

Ans. 1. 3,000 copies of the subject document were printed. Approximately 500 copies of the document were distributed before the document was recalled.

Ques. 2. Please state how much was spent by the Guarino for Congress committee for preparation, printing, distribution, and any other expenses relative to the leaflet which lacked the required disclaimer statement.

Ans. 2. The subject document, which was a draft, was prepared in-house and distributed by volunteers. The only expense incurred was the cost of printing. The cost of printing all 3,000 copies was \$175.12. The portion of that cost allocable to the documents distributed is approximately \$29.19.

Ques. 3. Please describe in detail what measures the Guarino for Congress committee took to halt production and distribution of the leaflet which lacked the required disclaimer statement.

Ques. 4. Please state the date on which the Guarino for Congress committee became aware that leaflets lacking the required disclaimer had been distributed to the public, and the date on which the Guarino for Congress committee completed its efforts to halt the production and distribution of the leaflet which lacked the required disclaimer statement.

87040522457

87040622458

Ans. 3. & 4. All copies of the subject document were printed at one time, on or about July 11, 1986. No more copies of the document were produced thereafter. Those copies that were distributed were distributed on or about July 12, 1986. On or about July 14 or 15, 1986, the committee received a telephone call which alerted the committee to the fact that the draft, unsigned document without the pro forma disclaimer had been printed instead of the final, signed document bearing the legend "Paid for by Joseph Guarino for Congress committee." The committee immediately called the two volunteer coordinators who were distributing the document and directed them to immediately cease distribution and return all remaining copies to the committee's headquarters in Port Washington, New York. Approximately 2,500 copies were so returned. Those copies were then each stamped with the pro forma disclaimer by use of a rubber stamp and ink.

Respectfully submitted,



Nicholas J. Donohue  
Attorney for Joseph Guarino for  
Congress and Peter G. Isaacs,  
as Treasurer

17 Barstow Road  
Great Neck, N.Y. 11021  
(516) 482-6100



STATE OF NEW YORK )  
 )SS.:  
COUNTY OF NASSAU )

STEVEN SUTTON, being duly sworn, deposes and says:

That he is Campaign Manager for Joseph Guarino for Congress;  
that he has read the foregoing answers and knows the contents thereof; that  
the same is true to his own knowledge except as to the matters therein  
stated to be alleged on information and belief, and that as to those  
matters he believes it to be true.

Steven Sutton

Steven Sutton

Sworn to before me this 15th  
day of October, 1986.

June Kouta

Notary Public

JUNE KOUTA  
Notary Public, State of New York  
No. 457766  
Qualified in Nassau County  
Commission Expires Nov. 28, 1988



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Nicholas J. Donohue  
Martin, Van De Walle,  
Guarino & Donohue  
17 Barstow Road  
Great Neck, NY 11021

RE: MUR 2213  
Joseph Guarino for Congress  
and Peter G. Isaacs, as  
treasurer

Dear Mr. Donohue:

On September 29, 1986, the Commission notified you that it had found reason to believe that your clients, the Joseph Guarino for Congress committee, and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, and the response which you submitted dated October 16, 1986, on 1986, the Commission determined to take no further action in this matter and closed its file.

The file in this matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of an expenditure to finance a communication expressly advocating the election or defeat of a clearly-identified candidate without the required disclaimer statement appears to be a violation of 2 U.S.C. § 441d(a)(1). The Commission specifically rejects your contention, expressed in your letter of October 11, 1986 and elsewhere, that "the document in question gave, on its face, ample notice to the reader of its source." On the contrary, the document in question failed to satisfy the notice requirement of 2 U.S.C. § 441d(a)(1). Your clients should take immediate steps to ensure that this does not occur in the future.

87040322460



Nicholas J Donohue  
Page 2

If you have any questions, please direct them to Laurence E. Tobey, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele  
General Counsel

BY: Lawrence M. Noble  
Deputy General Counsel

87040522461

RECEIVED AT THE FEC  
CCH# 1868  
OCT 21 P 1: 59  
F 2

MARTIN, VAN DE WALLE, GUARINO & DONOHUE

ATTORNEYS AT LAW  
17 BARSTOW ROAD  
GREAT NECK, N. Y. 11021

516 482-8100

JULES MARTIN  
CHARLES R. VAN DE WALLE  
JOSEPH A. GUARINO  
NICHOLAS J. DONOHUE  
STEPHEN P. MANDRACCHIA  
JAMES M. McGAHAN

October 16, 1986

Laurence E. Tobey, Esq.  
Federal Election Commission  
999 East Street, N.W.  
Washington, D.C. 20463

Re: MUR 2213  
Joseph Guarino for Congress Committee,  
and Peter G. Isaacs, as treasurer

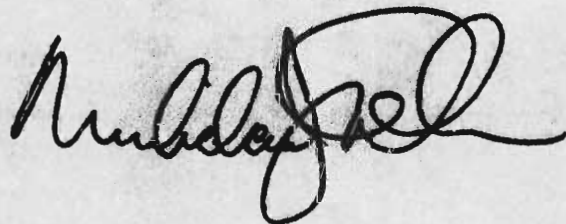
Dear Mr. Tobey:

On behalf of Joseph Guarino for Congress and Peter G. Isaacs, as treasurer, I respond to the Federal Election Commission's letter of September 29, 1986, which was received on October 3, 1986.

For the reasons set forth in our previous submissions, as supplemented by the enclosed responses to the questions which have been promulgated by the Federal Election Commission, we submit that the Commission should make no finding of probable cause or, alternatively, should terminate these proceedings. If there was a technical violation of the subject statute, that violation was inadvertent, was de minimis in nature and was speedily rectified when brought to light. Moreover, the document in question gave, on its face, ample notice to the reader of its source.

Nevertheless, we are amenable to entering into negotiations directed towards reaching a conciliation agreement prior to any finding of probable cause being made. We request that we be contacted for that purpose.

Very truly yours,



NJD/ark  
Encl.  
Certified Mail  
Return Receipt Requested  
P 273 573 624

86 OCT 22 AM 1: 21

GENERAL COUNSEL

87040522462



ANSWERS OF GUARINO FOR CONGRESS  
COMMITTEE AND PETER G. ISAACS, AS  
TREASURER, TO QUESTIONS PROMULGATED  
BY THE FEDERAL ELECTION COMMISSION  
RE: MUR 2213

Ques. 1. Please state the number of copies of the leaflet lacking the required disclaimer statement which reached the public.

Ans. 1. 3,000 copies of the subject document were printed. Approximately 500 copies of the document were distributed before the document was recalled.

Ques. 2. Please state how much was spent by the Guarino for Congress committee for preparation, printing, distribution, and any other expenses relative to the leaflet which lacked the required disclaimer statement.

Ans. 2. The subject document, which was a draft, was prepared in-house and distributed by volunteers. The only expense incurred was the cost of printing. The cost of printing all 3,000 copies was \$175.12. The portion of that cost allocable to the documents distributed is approximately \$29.19.

Ques. 3. Please describe in detail what measures the Guarino for Congress committee took to halt production and distribution of the leaflet which lacked the required disclaimer statement.

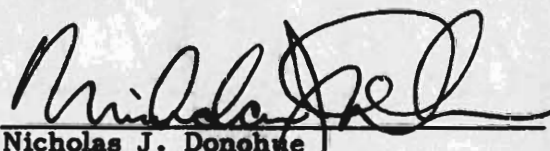
Ques. 4. Please state the date on which the Guarino for Congress committee became aware that leaflets lacking the required disclaimer had been distributed to the public, and the date on which the Guarino for Congress committee completed its efforts to halt the production and distribution of the leaflet which lacked the required disclaimer statement.

87040522463

87040522464

Ans. 3. & 4. All copies of the subject document were printed at one time, on or about July 11, 1986. No more copies of the document were produced thereafter. Those copies that were distributed were distributed on or about July 12, 1986. On or about July 14 or 15, 1986, the committee received a telephone call which alerted the committee to the fact that the draft, unsigned document without the pro forma disclaimer had been printed instead of the final, signed document bearing the legend "Paid for by Joseph Guarino for Congress committee." The committee immediately called the two volunteer coordinators who were distributing the document and directed them to immediately cease distribution and return all remaining copies to the committee's headquarters in Port Washington, New York. Approximately 2,500 copies were so returned. Those copies were then each stamped with the pro forma disclaimer by use of a rubber stamp and ink.

Respectfully submitted,



Nicholas J. Donohue  
Attorney for Joseph Guarino for  
Congress and Peter G. Isaacs,  
as Treasurer

17 Barstow Road  
Great Neck, N.Y. 11021  
(516) 482-6100



87040522465

That he is Campaign Manager for Joseph Guarino for Congress; that he has read the foregoing answers and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Steve Sutton

Sworn to before me this 15th  
day of October, 1986.

June Koster

**Notary Public**

JOHN HANCOCK  
NOTARY PUBLIC, State of New York  
No. 42-4577400  
Qualified in Queens County  
Commission Expires May, 2019 *ss*

FEDERAL ELECTION COMMISSION  
999 R Street, N.W.  
Washington, DC 20463

RECEIVED SENSITIVE  
OFFICE OF THE FEC  
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

SEP 23 AID: 15

DATE AND TIME OF TRANSMITTAL  
BY OGC TO THE COMMISSION:

MUR #2213  
DATE COMPLAINT RECEIVED  
BY OGC: August 4, 1986  
DATE OF NOTIFICATION TO  
RESPONDENT: August 11, 1986  
STAFF MEMBER: L. Tobey

COMPLAINANT'S NAME: Stanley S. Weithorn

RESPONDENTS' NAME: Joseph Guarino for Congress and  
Peter G. Isaacs, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 441d(a)(1)

INTERNAL REPORTS  
CHECKED: MURS 1496, 1498, 2159, 2173, 2223

FEDERAL AGENCIES  
CHECKED: None

SUMMARY OF ALLEGATIONS

Complainant alleges that Respondent Committee paid for and distributed a piece of campaign literature which lacked the disclaimer statement required by 2 U.S.C. § 441d(a)(1).

FACTUAL & LEGAL ANALYSIS

A. Complaint

Complainant Stanley S. Weithorn alleges that the Joseph Guarino for Congress committee and Peter G. Isaacs, as treasurer, (hereinafter, "Respondent Committee") violated 2 U.S.C. § 441d(a)(1) <sup>1/</sup> by making an expenditure to finance a communication which expressly advocated the election of a clearly identified candidate and the defeat of another clearly identified candidate, but which lacked the required disclaimer statement.

<sup>1/</sup> Complainant cited 11 C.F.R. § 110.11(a)(1), which is the corresponding section of the Commission's regulations.

87040322466



Complainant submitted a copy of a leaflet which he claimed was issued by Respondent Committee. The leaflet is entitled "Shoreham Advisory," and is written as a letter to "Dear Neighbor" from "Joseph Guarino." The leaflet raises the issue of a local nuclear power plant, attacks the record of an opposing candidate who is identified by name (incumbent Representative Mrazek), and states that "Joe Guarino is the Republican candidate for Congress in the 3rd Congressional District." The leaflet submitted by Complainant contains no disclaimer saying who paid for it.

B. Response

Respondent Committee filed its answer through counsel on August 25, 1986. Attachment I. Respondents claim that the leaflet submitted by Complainant was actually an "unsigned draft" which was never intended for publication. Respondents submitted as an exhibit a copy of a similar leaflet which is signed by the candidate and which contains the disclaimer "Paid for by Joseph Guarino for Congress Committee."<sup>2/</sup>

Respondents' campaign manager, Steven Sutton, states in an affidavit that the Committee printed and distributed "a quantity of the signed authorized 'SHOREHAM ADVISORY' communication"

<sup>2/</sup> Counsel submitted 2 exhibits. Exhibit A was intended to be a copy of the unsigned "draft" which lacked the disclaimer. Exhibit 1 was intended to be a copy of the signed leaflet which contained the disclaimer. In fact, counsel submitted two copies of the signed leaflet, both containing the disclaimer. Counsel was notified and agreed to submit substitute exhibits.

87040622467



containing the disclaimer statement. Mr. Sutton states that the printing of additional copies of the leaflet was ordered, but that a staff member inadvertently gave the unsigned draft to the printer, and some copies were distributed. Mr. Sutton states that upon discovery, "the circulation of these unauthorized and unsigned documents was immediately halted."

Respondents' counsel also attempts to argue that the leaflet actually complied with the requirements of 2 U.S.C. § 441d(a)(1). Respondents request that the Commission take no action on the Complaint.

C. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (hereinafter, "the Act"), provides that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. 2 U.S.C. § 441d(a)(1).

Complainant states that a member of his staff contacted the Guarino committee which stated that the committee had paid for the leaflet. Thus, the threshold requirements of § 441d (that a person make an expenditure) have been met. The communication clearly identifies both Mr. Guarino as the Republican candidate

87040522468

for Congress in the 3rd Congressional District of New York, and also his opponent, Representative Mrazek.

Whether the violation is complete turns on whether the language of the leaflet is determined to contain "express advocacy." The Supreme Court of the United States in Buckley v. Valeo gave as examples of express advocacy the words "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat." 424 U.S. at 44, footnote 52. Although the leaflet does not contain these particular words, it clearly pertains to the election. The leaflet concludes with the statement: "As your Congressman, I will fight on the congressional level to keep Long Island a safe place to live." This statement and the general tone of the communication satisfy the requirement for express advocacy in 2 U.S.C. § 441d(a)(1).

Respondents have claimed that the distribution of the leaflet without the required disclaimer was a mistake by a staff member. The Act does not provide for mistake as a defense to liability. However, in other cases, the Commission has found reason to believe that a violation was committed, and taken no further action where few copies of a communication were distributed, or where the expenditure was minimal. See, e.g., MURs 1496 and 1498.

Respondents' counsel has also argued that the leaflet clearly shows that it was authored by Mr. Guarino who is

97040322469



specifically identified as the Republican candidate for Congress in the third Congressional District. Counsel contends that "the communication thus affords the reader adequate notice of the identity of the candidate who paid for and authorized, indeed authored, the communication." Counsel concludes that the source of the communication is "clear on its face," and that both the letter and spirit of the regulation have been sufficiently adhered to.

Counsel's argument is unpersuasive. As mentioned above, the Act provides that a communication which is paid for and authorized by the authorized political committee of a candidate or its agents "shall clearly state that the communication has been paid for by such authorized political committee." 2 U.S.C. § 441d(a)(1). The source of the "Shoreham Advisory" is not clear on its face because it could have been paid for by someone other than the Guarino for Congress committee. Therefore, it is not convincing to argue that a communication which lacks the statement that it was paid for by Guarino for Congress has met the requirements of 2 U.S.C. § 441d(a)(1).

Neither the Complainant nor the Respondent Committee has given any indication of how many of the leaflets lacking the required disclaimer were published and distributed. Prior cases have also considered the amount spent for the communication. See, e.g., MUR 1498. The Commission may also wish to consider how long the leaflets were available to the public, and

87040622470



what measures the committee undertook to recover them. If it were known that the leaflets only reached a very few individuals, or that a only a minimal amount was spent on the leaflets, or that they were promptly withdrawn from circulation to the public, then it might be appropriate for the Commission to take no further action.

However, because the extent, cost, and duration of distribution are not known, this Office recommends that the Commission find reason to believe that the Joseph Guarino for Congress committee and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1). This Office further recommends that the Commission authorize and send the attached Questions to Respondents.

#### RECOMMENDATIONS

1. Find reason to believe that the Joseph Guarino for Congress committee, and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1).
2. Approve and send the attached letter to Respondents.
3. Approve and send the attached Questions to Respondents.

Charles N. Steele  
General Counsel

Date

9/22/86

BY:

Lawrence M. Noble  
Deputy General Counsel

#### Attachments

- I. Respondents' Answer to Complaint
- II. Proposed letter to Respondents
- III. Proposed Questions to Respondents

87040622471

7/26/86  
GEC# 1314

**MARTIN, VAN DE WALLE, GUARINO & DONOHUE**

ATTORNEYS AT LAW  
17 BARNSTOW ROAD  
GREAT NECK, N. Y. 11021

516 462-6100

JULES MARTIN  
CHARLES R. VAN DE WALLE  
JOSEPH A. GUARINO  
NICHOLAS J. DONOHUE  
STEPHEN P. MAIORACCHIA  
JAMES H. McGAHAN

August 20, 1986

16 AUG 25 P 3: 59

Lawrence M. Noble, Esq.  
Deputy General Counsel  
Federal Election Commission  
Washington, D. C. 20463

Re: MUR 2213

Dear Mr. Noble:

Enclosed please find a duly executed designation of the undersigned as counsel for Joseph Guarino for Congress and Peter G. Isaacs, as Treasurer, in regard to this matter. On behalf of Joseph Guarino for Congress and Peter G. Isaacs, as Treasurer, we respond to your letter of August 11, 1986 and to the complaint of Stanley S. Weithorn, Esq., dated July 28, 1986, which was enclosed therewith.

As appears from the annexed affidavit of Steven Sutton, Campaign Manager of Joseph Guarino for Congress, sworn to August 20, 1986, the "piece of campaign literature" which is annexed to the complaint as Exhibit "A" is an unsigned draft which was not authorized for circulation but which inadvertently found its way into circulation. A copy of the actual "SHOREHAM ADVISORY" communication, which was authorized by the Committee and signed by the candidate, is annexed hereto as Exhibit "1". That communication bears the clear legend "Paid for by Joseph Guarino for Congress Committee" and is signed by the candidate.

A quantity of the signed and authorized "SHOREHAM ADVISORY" communication, bearing the aforementioned legend, was printed and distributed by the Committee. The printing of additional copies of the communication was then ordered but, inadvertently, a member of the staff submitted the unsigned draft to the printer, a copy of which is annexed to the complaint herein as Exhibit "A". Those documents were printed and some of them were distributed before the error was

87040522472



87040622473

Lawrence M. Noble, Esq.  
Deputy General Counsel  
Federal Election Commission  
August 20, 1986  
Page 2

discovered by the Committee and the circulation of those unauthorized and unsigned documents was halted. Future distribution will be only of the signed and authorized document, which is annexed hereto as Exhibit "1".

Thus, the draft document, a copy of which is annexed to the complaint in this matter, was unauthorized by the candidate in the form in which it was inadvertently released. As appears from the accompanying affidavit, distribution of that document was short lived and the situation was corrected as soon as the error was discovered. That being the case, it is respectfully submitted that no action need be or should be taken on the basis of the complaint herein.

Moreover, although the draft document did not bear the clear legend set forth on the authorized and signed document, the draft document clearly shows that it was authored by Mr. Guarino who is specifically identified as "the Republican candidate for Congress in the 3rd Congressional District." The communication thus affords the reader adequate notice of the identity of the candidate who paid for and authorized, indeed authored, the communication, in compliance with 11 CFR Section 110.11 (a) (1). Since the source of the communication is clear on its face, both the letter and spirit of the regulation, it is submitted, have been sufficiently adhered to.

Accordingly, it is respectfully submitted that no action should be taken on the basis of the subject complaint and that a recommendation should, accordingly, be made that the complaint be dismissed.

Respectfully submitted,

NJD/ark  
Encl.





**STATEMENT OF DESIGNATION OF COUNSEL**

NR 2213  
NAME OF COUNSEL: NICHOLAS J. DONOHUE  
ADDRESS: 17 Barstow Road  
Great Neck, N.Y. 11021  
TELEPHONE: (516) 482-6100

The above-named individual is hereby designated as my  
counsel and is authorized to receive any notifications and other  
communications from the Commission and to act on my behalf before  
the Commission.

JOSEPH GUARINO FOR CONGRESS, and  
PETER G. ISAACS, AS TREASURER

August 20, 1986

Date

By:

Peter G. Isaacs  
Signature Peter G. Isaacs

RESPONDENT'S NAME: JOSEPH GUARINO FOR CONGRESS  
PETER G. ISAACS, TREASURER  
ADDRESS: P. O. Box 181  
Port Washington, N.Y. 11050  
HOME PHONE: \_\_\_\_\_  
BUSINESS PHONE: (516) 944-5870

AFFIDAVIT

STATE OF NEW YORK )  
                              )SS.:  
COUNTY OF NASSAU )

STEVEN SUTTON, being duly sworn, deposes and says:

I am the Campaign Manager for Joseph Guarino for Congress and am familiar with the matters recited herein. I make this affidavit in response to the complaint of Stanley S. Weithorn, Esq., dated July 28, 1986.

The "piece of campaign literature" which is annexed to the complaint as Exhibit "A", is an unsigned draft which was not authorized for circulation but which inadvertently found its way into circulation. A copy of the actual "SHOREHAM ADVISORY" communication, which was authorized by the Committee and signed by the candidate, is annexed hereto as Exhibit "A". That communication bears the clear legend "Paid for by Joseph Guarino for Congress Committee" and is signed by Joseph Guarino.

A quantity of the signed and authorized "SHOREHAM ADVISORY" communication, bearing the aforementioned legend, were printed and distributed by the Committee. The printing of additional copies of the communication was then ordered but, inadvertently, a

87040622475



87040622476

member of the staff submitted the unsigned draft to the printer, a copy of which is annexed to the complaint herein as Exhibit "A". Those documents were printed and some of them were distributed during a limited period before the error was discovered by the Committee. Upon discovery, the circulation of those unauthorized and unsigned documents was immediately halted.

Steven Sutton  
Steven Sutton

Sworn to before me this 20th  
day of August, 1986.

Richard Allen Nott  
Notary Public



# SHOREHAM ADVISORY

By: Joseph Guarino

Dear Neighbor,

I don't know if there is another issue facing us today as important as Shoreham.

Like you, I believe that Shoreham should never open under any circumstances. The problems created by Shoreham are too overwhelming even to consider the possibility of its opening. Long Island can not be evacuated in the event of emergency. That is enough to justify the plant never opening.

I have been pleased that recently so many of our public officials have voiced concern on this issue. Unfortunately, our current Congressman, Bob Mrazek, does not consider Shoreham to be a significant problem for those he represents. He has failed to speak out strongly or to take a leadership role on this issue. Throughout the Shoreham discussions of the past months, Mr. Mrazek has sat all too silently on the sidelines while other elected officials have had the courage and vision to openly debate this crucial issue.

Mr. Mrazek has, in the past, made two decisions on Shoreham. The first was to vote against an independent safety inspection of Shoreham. The second was his decision to take campaign contributions from a LILCO special interest group.

I believe it is irresponsible for a "representative of the people" not to work for effective solutions for constituent problems. We have the right to expect that from our Congressman.

**WE MUST STOP SHOREHAM NOW!** A representative from every level of government, except one, has worked to keep Shoreham closed. As your Congressman, I will fight on the congressional level to keep Long Island a safe place to live.

Sincerely,

*Joe*  
Joseph Guarino

Joe Guarino is the Republican candidate for Congress in the 3rd Congressional District. Joe is currently a member of the North Hempstead Town Board. As a former Town Attorney for North Hempstead, he has extensive experience as the Town's principle environmental litigator. He was responsible for the drafting of significant local legislation striking a balance between environmental protection and industrial and residential development.

Exhibit "1"

Paid for by Joseph Guarino for Congress Committee

87040622477

# SHOREHAM ADVISORY

By: Joseph Guarino

Dear Neighbor,

I don't know if there is another issue facing us today as important as Shoreham.

Like you, I believe that Shoreham should never open under any circumstances. The problems created by Shoreham are too overwhelming even to consider the possibility of its opening. Long Island can not be evacuated in the event of emergency. That is enough to justify the plant never opening.

I have been pleased that recently so many of our public officials have voiced concern on this issue. Unfortunately, our current Congressman, Bob Mrazek, does not consider Shoreham to be a significant problem for those he represents. He has failed to speak out strongly or to take a leadership role on this issue. Throughout the Shoreham discussions of the past months, Mr. Mrazek has sat all too silently on the sidelines while other elected officials have had the courage and vision to openly debate this crucial issue.

Mr. Mrazek has, in the past, made two decisions on Shoreham. The first was to vote against an independent safety inspection of Shoreham. The second was his decision to take campaign contributions from a LILCO special interest group.

I believe it is irresponsible for a "representative of the people" not to work for effective solutions for constituent problems. We have the right to expect that from our Congressman.

**WE MUST STOP SHOREHAM NOW!** A representative from every level of government, except one, has worked to keep Shoreham closed. As your Congressman, I will fight on the congressional level to keep Long Island a safe place to live.

Sincerely,

*Joe*  
Joseph Guarino

Joe Guarino is the Republican candidate for Congress in the 3rd Congressional District. Joe is currently a member of the North Hempstead Town Board. As a former Town Attorney for North Hempstead, he has extensive experience as the Town's principle environmental litigator. He was responsible for the drafting of significant local legislation striking a balance between environmental protection and industrial and residential development.

Exhibit "A"

Paid for by Joseph Guarino for Congress Committee





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Martin, Van de Walle, Guarino, & Donohue  
Attn: Nicholas J. Donohue  
17 Barstow RD  
Great Neck, NY 11021

RE: MUR 2213  
Joseph Guarino for Congress  
Committee, and Peter G.  
Isaacs, as treasurer

Dear Mr. Donohue:

The Federal Election Commission notified your clients on August 11, 1986 of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time. We acknowledge receipt of your clients' explanation of this matter on August 25, 1986.

Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission, on , 1986, determined that there is reason to believe that the Joseph Guarino for Congress Committee and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1), a provision of the Act.

You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit such materials, along with your answers to the enclosed questions, within fifteen days of your receipt of this letter. Statements should be submitted under oath.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. You should be advised, however, that if pre-probable cause conciliation is requested, the Commission is under no obligation to propose a conciliation agreement until it has completed its investigation in this matter. Also, under 11 C.F.R. § 111.18(d), the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. In the

87040622479

Martin, Van de Walle, Guarino, & Donohue  
Attn: Nicholas J. Donohue  
Page 2

absence of any information which demonstrates that no further action should be taken against your clients, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2, of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. If you have any questions, please contact Laurence E. Tobey, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Joan D. Aikens  
Chairman

Enclosure:  
Questions to Respondents  
Procedures

87040322480



QUESTIONS

TO: Guarino for Congress committee  
and Peter G. Isaacs, as treasurer

c/o Nicholas J. Donohue, Esquire  
Martin, Van de Walle, Guarino, and Donohue  
17 Barstow RD  
Great Neck, NY 11021

RE: MUR 2213

INSTRUCTIONS

In answering these questions, furnish all documents and other information, however obtained, including hearsay, that are in possession of, known by, or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

With respect to the leaflet entitled "SHOREHAM ADVISORY" which is the subject of this matter, please answer the following questions:

1. Please state the number of copies of the leaflet lacking the required disclaimer statement which reached the public.
2. Please state how much was spent by the Guarino for Congress committee for preparation, printing, distribution, and any other expenses relative to the leaflet which lacked the required disclaimer statement.
3. Please describe in detail what measures the Guarino for Congress committee took to halt production and distribution of the leaflet which lacked the required disclaimer statement.
4. Please state the date on which the Guarino for Congress committee became aware that leaflets lacking the required disclaimer had been distributed to the public, and the date on which the Guarino for Congress committee completed its efforts to halt the production and distribution of the leaflet which lacked the required disclaimer statement.

87040522482





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 29, 1986

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Martin, Van de Walle, Guarino, & Donohue  
Attn: Nicholas J. Donohue  
17 Barstow RD  
Great Neck, NY 11021

RE: MUR 2213  
Joseph Guarino for Congress  
Committee, and Peter G.  
Isaacs, as treasurer

Dear Mr. Donohue:

The Federal Election Commission notified your clients on August 11, 1986 of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time. We acknowledge receipt of your clients' explanation of this matter on August 25, 1986.

Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission, on September 25, 1986, determined that there is reason to believe that the Joseph Guarino for Congress Committee and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1), a provision of the Act.

You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit such materials, along with your answers to the enclosed questions, within fifteen days of your receipt of this letter. Statements should be submitted under oath.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. You should be advised, however, that if pre-probable cause conciliation is requested, the Commission is under no obligation to propose a conciliation agreement until it has completed its investigation in this matter. Also, under 11 C.F.R. § 111.18(d), the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. In the

87040522483

Martin, Van de Walle, Guarino, & Donohue  
Attn: Nicholas J. Donohue  
Page 2

absence of any information which demonstrates that no further action should be taken against your clients, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2, of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. If you have any questions, please contact Laurence E. Tobey, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

*Joan D. Aikens*

Joan D. Aikens  
Chairman

Enclosure:  
Questions to Respondents  
Procedures

87040522484



**QUESTIONS**

TO: Guarino for Congress committee  
and Peter G. Isaacs, as treasurer

c/o Nicholas J. Donohue, Esquire  
Martin, Van de Walle, Guarino, and Donohue  
17 Barstow RD  
Great Neck, NY 11021

RE: MUR 2213

**INSTRUCTIONS**

In answering these questions, furnish all documents and other information, however obtained, including hearsay, that are in possession of, known by, or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

With respect to the leaflet entitled "SHOREHAM ADVISORY" which is the subject of this matter, please answer the following questions:

87040522485

1. Please state the number of copies of the leaflet lacking the required disclaimer statement which reached the public.
2. Please state how much was spent by the Guarino for Congress committee for preparation, printing, distribution, and any other expenses relative to the leaflet which lacked the required disclaimer statement.
3. Please describe in detail what measures the Guarino for Congress committee took to halt production and distribution of the leaflet which lacked the required disclaimer statement.
4. Please state the date on which the Guarino for Congress committee became aware that leaflets lacking the required disclaimer had been distributed to the public, and the date on which the Guarino for Congress committee completed its efforts to halt the production and distribution of the leaflet which lacked the required disclaimer statement.

87040522486



RECEIVED AT THE FEC  
800 1562  
86 SEP 19 P12: 16

MARTIN, VAN DE WALLE, GUARINO & DONOHUE

ATTORNEYS AT LAW  
17 BARSTOW ROAD  
GREAT NECK, N. Y. 11021  
SIS 462-6100

JULES MARTIN  
CHARLES R. VAN DE WALLE  
JOSEPH A. GUARINO  
NICHOLAS J. DONOHUE  
STEPHEN R. MANDRACCHIA  
JAMES M. MCGAHAN

September 16, 1986

Laurence Tobey, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 2213

Dear Mr. Tobey:

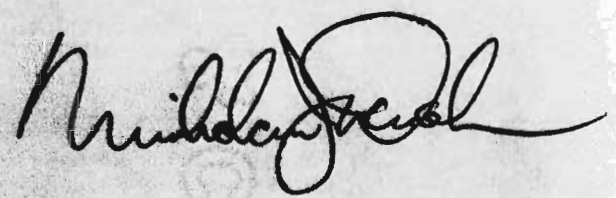
In furtherance of our conversation of September 11, 1986 I write to clarify the matter contained in my letter of August 20, 1986, and the enclosures submitted therewith in connection with this matter. Annexed to my August 20th letter, as Exhibit "1" thereto, is a copy of the actual "Shoreham Advisory" communication, authorized by Joseph Guarino for Congress and signed by the candidate. That document is printed on yellow paper.

An additional copy of that same document, photocopied onto white paper, was annexed to the affidavit of Steven Sutton, sworn to August 20, 1986. There is no difference between those two documents, the one annexed to the Sutton affidavit being a photocopy of the original document annexed to my letter.

The unsigned draft document, referred to in our August 20th submission, is that document annexed to the complaint herein as Exhibit "A".

Thank you for your attention to this matter.

Yours very truly,



NJD/m

86 SEP 19 P 4: 07  
RECEIVED  
OFFICE OF THE  
GENERAL COUNSEL

87040522487

QCOH 1314

**MARTIN, VAN DE WALLE, GUARINO & DONOHUE**

ATTORNEYS AT LAW  
17 BARSTOW ROAD  
GREAT NECK, N. Y. 11021  
S16 482-6100

JULES MARTIN  
CHARLES S. VAN DE WALLE  
JOSEPH A. GUARINO  
NICHOLAS J. DONOHUE  
STEPHEN A. MANDRACCHIA  
JAMES M. McSAHAN

August 20, 1986

86 AUG 25 4:35 PM

RECEIVED  
OFFICE OF THE  
GENERAL COUNSEL

Lawrence M. Noble, Esq.  
Deputy General Counsel  
Federal Election Commission  
Washington, D. C. 20463

Re: MUR 2213

Dear Mr. Noble:

Enclosed please find a duly executed designation of the undersigned as counsel for Joseph Guarino for Congress and Peter G. Isaacs, as Treasurer, in regard to this matter. On behalf of Joseph Guarino for Congress and Peter G. Isaacs, as Treasurer, we respond to your letter of August 11, 1986 and to the complaint of Stanley S. Weithorn, Esq., dated July 28, 1986, which was enclosed therewith.

As appears from the annexed affidavit of Steven Sutton, Campaign Manager of Joseph Guarino for Congress, sworn to August 20, 1986, the "piece of campaign literature" which is annexed to the complaint as Exhibit "A" is an unsigned draft which was not authorized for circulation but which inadvertently found its way into circulation. A copy of the actual "SHOREHAM ADVISORY" communication, which was authorized by the Committee and signed by the candidate, is annexed hereto as Exhibit "1". That communication bears the clear legend "Paid for by Joseph Guarino for Congress Committee" and is signed by the candidate.

A quantity of the signed and authorized "SHOREHAM ADVISORY" communication, bearing the aforementioned legend, was printed and distributed by the Committee. The printing of additional copies of the communication was then ordered but, inadvertently, a member of the staff submitted the unsigned draft to the printer, a copy of which is annexed to the complaint herein as Exhibit "A". These documents were printed and some of them were distributed before the error was

87040522488



Lawrence M. Noble, Esq.  
Deputy General Counsel  
Federal Election Commission  
August 20, 1986  
Page 2

discovered by the Committee and the circulation of those unauthorized and unsigned documents was halted. Future distribution will be only of the signed and authorized document, which is annexed hereto as Exhibit "1".

Thus, the draft document, a copy of which is annexed to the complaint in this matter, was unauthorized by the candidate in the form in which it was inadvertently released. As appears from the accompanying affidavit, distribution of that document was short lived and the situation was corrected as soon as the error was discovered. That being the case, it is respectfully submitted that no action need be or should be taken on the basis of the complaint herein.

Moreover, although the draft document did not bear the clear legend set forth on the authorized and signed document, the draft document clearly shows that it was authored by Mr. Guarino who is specifically identified as "the Republican candidate for Congress in the 3rd Congressional District." The communication thus affords the reader adequate notice of the identity of the candidate who paid for and authorized, indeed authored, the communication, in compliance with 11 CFR Section 110.11 (a) (1). Since the source of the communication is clear on its face, both the letter and spirit of the regulation, it is submitted, have been sufficiently adhered to.

Accordingly, it is respectfully submitted that no action should be taken on the basis of the subject complaint and that a recommendation should, accordingly, be made that the complaint be dismissed.

Respectfully submitted,



NJD/ark  
Encl.

R 7 0 4 0 5 2 2 4 8 9

**STATEMENT OF DESIGNATION OF COUNSEL**

**NR** 2213  
**NAME OF COUNSEL:** NICHOLAS J. DONOHUE  
**ADDRESS:** 17 Barstow Road  
Great Neck, N.Y. 11021  
**TELEPHONE:** (516) 482-6100

The above-named individual is hereby designated as my  
counsel and is authorized to receive any notifications and other  
communications from the Commission and to act on my behalf before  
the Commission.

August 20, 1986

**Date**

**JOSEPH GUARINO FOR CONGRESS, and  
PETER G. ISAACS, AS TREASURER**

**By:**

*Peter G. Isaacs*  
**Signature Peter G. Isaacs**

**RESPONDENT'S NAME:** JOSEPH GUARINO FOR CONGRESS  
PETER G. ISAACS, TREASURER  
**ADDRESS:** P. O. Box 181  
Port Washington, N.Y. 11050  
**HOME PHONE:** \_\_\_\_\_  
**BUSINESS PHONE:** (516) 944-5870

87040522490



AFFIDAVIT

STATE OF NEW YORK )  
                              )SS.:  
COUNTY OF NASSAU )

STEVEN SUTTON, being duly sworn, deposes and says:

I am the Campaign Manager for Joseph Guarino for Congress and am familiar with the matters recited herein. I make this affidavit in response to the complaint of Stanley S. Weithorn, Esq., dated July 28, 1986.

The "piece of campaign literature" which is annexed to the complaint as Exhibit "A", is an unsigned draft which was not authorized for circulation but which inadvertently found its way into circulation. A copy of the actual "SHOREHAM ADVISORY" communication, which was authorized by the Committee and signed by the candidate, is annexed hereto as Exhibit "A". That communication bears the clear legend "Paid for by Joseph Guarino for Congress Committee" and is signed by Joseph Guarino.

A quantity of the signed and authorized "SHOREHAM ADVISORY" communication, bearing the aforementioned legend, were printed and distributed by the Committee. The printing of additional copies of the communication was then ordered but, inadvertently, a

87040522491

member of the staff submitted the unsigned draft to the printer, a copy of which is annexed to the complaint herein as Exhibit "A". Those documents were printed and some of them were distributed during a limited period before the error was discovered by the Committee. Upon discovery, the circulation of those unauthorized and unsigned documents was immediately halted.

Steven Sutton  
Steven Sutton

Sworn to before me this 20th  
day of August, 1986.

Richard Allen Whitworth  
Notary Public ~~Notary Public~~ State of New York  
No. 41-4321333  
Qualified in Queens County  
Commission Expires March 30, 1988

87040522492



# SHOREHAM ADVISORY

By: Joseph Guarino

Dear Neighbor,

I don't know if there is another issue facing us today as important as Shoreham.

Like you, I believe that Shoreham should never open under any circumstances. The problems created by Shoreham are too overwhelming even to consider the possibility of its opening. Long Island can not be evacuated in the event of emergency. That is enough to justify the plant never opening.

I have been pleased that recently so many of our public officials have voiced concern on this issue. Unfortunately, our current Congressman, Bob Mrazek, does not consider Shoreham to be a significant problem for those he represents. He has failed to speak out strongly or to take a leadership role on this issue. Throughout the Shoreham discussions of the past months, Mr. Mrazek has sat all too silently on the sidelines while other elected officials have had the courage and vision to openly debate this crucial issue.

Mr. Mrazek has, in the past, made two decisions on Shoreham. The first was to vote against an independent safety inspection of Shoreham. The second was his decision to take campaign contributions from a LILCO special interest group.

I believe it is irresponsible for a "representative of the people" not to work for effective solutions for constituent problems. We have the right to expect that from our Congressman.

**WE MUST STOP SHOREHAM NOW!** A representative from every level of government, except one, has worked to keep Shoreham closed. As your Congressman, I will fight on the congressional level to keep Long Island a safe place to live.

Sincerely,

*Joe*  
Joseph Guarino

Joe Guarino is the Republican candidate for Congress in the 3rd Congressional District. Joe is currently a member of the North Hempstead Town Board. As a former Town Attorney for North Hempstead, he has extensive experience as the Town's principle environmental litigator. He was responsible for the drafting of significant local legislation striking a balance between environmental protection and industrial and residential development.

Exhibit "A"



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

7elm  
August 11, 1986

Joseph Guarino For Congress, and  
Peter G. Isaacs, as Treasurer  
P.O. Box 181  
Port Washington, NY 11050

Re: MUR 2213

Dear Mr. Isaacs:

The Federal Election Commission received a complaint which alleges that the Joseph Guarino For Congress committee, and you, as treasurer may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2213. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you and Joseph Guarino For Congress in this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

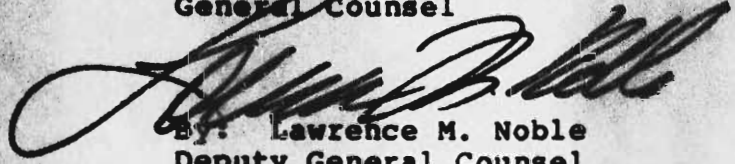
87040622494



If you have any questions, please contact Lawrence Tobey, the attorney assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles M. Steele  
General Counsel



By: Lawrence M. Noble  
Deputy General Counsel

Enclosures  
Complaint  
Procedures  
Designation of Counsel Statement

cc: Joseph A. Guarino

87040622495

# SHOREHAM ADVISORY

By: Joseph Guarino

Dear Neighbor,

I don't know if there is another issue facing us today as important as Shoreham.

Like you, I believe that Shoreham should never open under any circumstances. The problems created by Shoreham are too overwhelming even to consider the possibility of its opening. Long Island can not be evacuated in the event of emergency. That is enough to justify the plant never opening.

I have been pleased that recently so many of our public officials have voiced concern on this issue. Unfortunately, our current Congressman, Bob Mrazek, does not consider Shoreham to be a significant problem for those he represents. He has failed to speak out strongly or to take a leadership role on this issue. Throughout the Shoreham discussions of the past months, Mr. Mrazek has sat all too silently on the sidelines while other elected officials have had the courage and vision to openly debate this crucial issue.

Mr. Mrazek has, in the past, made two decisions on Shoreham. The first was to vote against an independent safety inspection of Shoreham. The second was his decision to take campaign contributions from a LILCO special interest group.

I believe it is irresponsible for a "representative of the people" not to work for effective solutions for constituent problems. We have the right to expect that from our Congressman.

**WE MUST STOP SHOREHAM NOW!** A representative from every level of government, except one, has worked to keep Shoreham closed. As your Congressman, I will fight on the congressional level to keep Long Island a safe place to live.

Sincerely,

Joseph Guarino

Joe Guarino is the Republican candidate for Congress in the 3rd Congressional District. Joe is currently a member of the North Hempstead Town Board. As a former Town Attorney for North Hempstead, he has extensive experience as the Town's principle environmental litigator. He was responsible for the drafting of significant local legislation striking a balance between environmental protection and industrial and residential development.

87040622496





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 11, 1986

Mr. Stanley S. Weithorn, Esquire  
Baer, Marks & Upham  
805 Third Avenue  
New York, NY 10022

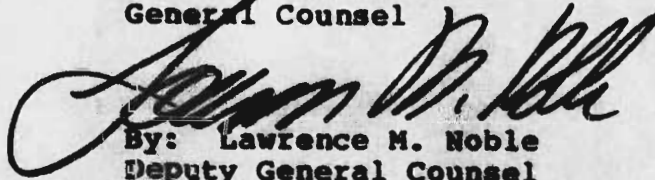
Dear Mr. Weithorn:

This letter will acknowledge receipt of a complaint filed by you which we received on August 4, 1986, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the Joseph Guarino For Congress committee. The respondent will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as the original complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints. We have numbered this matter under review MUR 2213. Please refer to this number in all future correspondence. If you have any questions, please contact Lorraine F. Ramos at (202) 376-3110.

Sincerely,

Charles N. Steele  
General Counsel

  
By: Lawrence M. Noble  
Deputy General Counsel

Enclosure

97040622497

BAER MARKS & UPHAM  
805 THIRD AVENUE  
NEW YORK, NY 10022

TELEPHONE (212) 702-5700

THOMAS E. ALBRIGHT  
WILLIAM F. BEZLER  
MICHAEL BERNE  
STUART H. BONPEY  
MYLES A. CANE  
JEFFREY M. COLE  
GEORGE H. COLIN  
MICHAEL DELIKAT  
BERNARD A. FEUERSTEIN  
WILLIAM E. FRIEDMAN  
JOEL M. MANDEL  
DENNIS I. HELLMAN  
ROCHELLE KORMAN  
RICHARD A. KRANTZ  
HERBERT J. LEVINE  
ROBERT A. LEVITAS  
BARRY J. MANDEL

ERIC D. MARTINS  
HERBERT S. MECKER  
LAWRENCE W. MILAS  
JAMES M. MORRISSEY  
NORMAN NEWMAN  
SCOTT D. NEWMAN  
WILLIAM B. NORDEN  
KEITH W. PATTIZ  
RAYMOND RUBIN  
EUGENE R. SCHEIMAN  
STEPHEN F. SELIG  
HOWARD R. SHAPIRO  
LEONARD J. SILEROV  
MARK D. TURNER  
STANLEY S. WEITHORN  
FLOYD I. WITLIN

QCC #1113  
86 JUL 31 P2:01

CABLE JULIEAR  
TWX 710-681-2780

TELECOPIER: 702-5941

WRITER'S DIRECT DIAL NUMBER:  
(212) 702- 5907

July 28, 1986

Charles Steele  
General Counsel  
Federal Election Committee  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Steele:

I am writing to register a formal complaint against Joseph Guarino for Congress, P.O. Box 181, Port Washington, New York 11050, the official campaign committee of Joseph A. Guarino. Three (3) copies of my complaint are enclosed.

Thank you in advance for your prompt consideration of this matter.

Respectfully submitted,



Stanley S. Weithorn

SSW:df  
Enc.

86 AUG 4 P4:08

RECEIVED  
OFFICE OF THE  
GENERAL COUNSEL

87040522498



C O M P L A I N T

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

STANLEY S. WEITHORN, being duly sworn, deposes and  
says:

1. My name is Stanley S. Weithorn and I reside at 144  
Woodhill Lane, Manhasset, New York.

2. I am registering a formal complaint against Joseph  
Guarino for Congress, P.O. Box 181, Port Washington, New York  
11050. Joseph Guarino for Congress is the official campaign  
committee of Joseph A. Guarino, the Republican/Conservative  
candidate for Congress in New York's Third Congressional District.

3. Upon information and belief, the piece of campaign  
literature attached hereto as Exhibit "A" was issued by Joseph  
Guarino for Congress in violation of 11 CFR §110.11(a)(1), which  
clearly states:

[W]henver any person makes an  
expenditure for the purpose of  
financing a communication that  
expressly advocates the election  
or defeat of a clearly identified  
candidate,...a disclaimer meeting  
the requirements of 11 CFR 110.11  
(a)(1)(i), (ii), (iii) or (iv)  
shall appear and be presented  
in a clear and conspicuous manner  
to give the reader...adequate  
notice of the identity of persons  
who paid for and, where required,  
who authorized the communication.

87040522499

The piece of campaign literature attached hereto as Exhibit "A" contains no such required disclaimer.

4. The source of my information and the reason for my belief is the following: On July 28, 1986, a member of my staff placed a call to Joseph Guarino for Congress. The staff member identified the piece of campaign literature and inquired as to its source. She was told by the person who answered the telephone at Guarino headquarters that the literature was in fact paid for by Joseph Guarino for Congress.

Dated: New York, New York  
July 28, 1986

  
STANLEY S. WEITHORN

Subscribed and sworn  
to before me this 28th  
day of July, 1986

  
Notary Public

JILL ORENLAND  
NOTARY PUBLIC, State of New York  
No. 52-47889-45  
Qualified in Suffolk County  
Term Expires March 30, 1987

87040622500



# SHOREHAM ADVISORY

By: Joseph Guarino

Dear Neighbor,

I don't know if there is another issue facing us today as important as Shoreham.

Like you, I believe that Shoreham should never open under any circumstances. The problems created by Shoreham are too overwhelming even to consider the possibility of its opening. Long Island can not be evacuated in the event of emergency. That is enough to justify the plant never opening.

I have been pleased that recently so many of our public officials have voiced concern on this issue. Unfortunately, our current Congressman, Bob Mrazek, does not consider Shoreham to be a significant problem for those he represents. He has failed to speak out strongly or to take a leadership role on this issue. Throughout the Shoreham discussions of the past months, Mr. Mrazek has sat all too silently on the sidelines while other elected officials have had the courage and vision to openly debate this crucial issue.

Mr. Mrazek has, in the past, made two decisions on Shoreham. The first was to vote against an independent safety inspection of Shoreham. The second was his decision to take campaign contributions from a LILCO special interest group.

I believe it is irresponsible for a "representative of the people" not to work for effective solutions for constituent problems. We have the right to expect that from our Congressman.

WE MUST STOP SHOREHAM NOW! A representative from every level of government, except one, has worked to keep Shoreham closed. As your Congressman, I will fight on the congressional level to keep Long Island a safe place to live.

Sincerely,

Joseph Guarino

---

Joe Guarino is the Republican candidate for Congress in the 3rd Congressional District. Joe is currently a member of the North Hempstead Town Board. As a former Town Attorney for North Hempstead, he has extensive experience as the Town's principle environmental litigator. He was responsible for the drafting of significant local legislation striking a balance between environmental protection and industrial and residential development.

87040522502



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2213

Date Filmed 1/2/87 Camera No. --- 2

Cameraman AL





FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

2/13/87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE  
PUBLIC FILE OF CLOSED MUR 3213 .

87047542239

012345678

507 251 26 13

● **SENDER:** Complete items 1, 2, 3, and 4.  
Add your address in the "RETURN TO" space  
on reverse.

**(CONSULT POSTMASTER FOR FEES)**

1. The following service is requested (check one).  
☒ Show to whom and date delivered .....  
☐ Show to whom, date, and address of delivery..

2. ☐ **RESTRICTED DELIVERY**  
(The restricted delivery fee is charged in addition to the return receipt fee.)

3. ARTICLE ADDRESSED TO:  
1218 S. 1st St. - Uptown  
APR 1 1966  
APR 1 1966  
NEW YORK NY 10011

4. TYPE OF SERVICE:  
☐ REGISTERED ☐ INSURED  
☒ CERTIFIED ☐ COD  
☐ EXPRESS MAIL

ARTICLE NUMBER  
A10:40  
743844

**(Always obtain signature of addressee or agent)**  
I have received the article described above.  
SIGNATURE ☐ Addressee ☒ Authorized agent  
V. STEISGE

5. DATE OF DELIVERY  
12/20/66

POSTMARK

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 23, 1986

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Stanley S. Weithorn, Esquire  
Baer, Marks & Upham  
805 Third Avenue  
New York, NY 10022

RE: MUR 2213

Dear Mr. Weithorn:

The Federal Election Commission has reviewed the allegations of your complaint dated July 28, 1986 and determined on the basis of the information provided in your complaint and information provided by the Respondents that there is no reason to believe that the Guarino for Congress committee, and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act").

Accordingly, the Commission has decided to close its file in this matter. The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

This Office regrets the fact that this notification was delayed in reaching you. This letter was inadvertently not sent at the time this case was closed on November 18, 1986. We apologize for any inconvenience this may have caused.

Sincerely,

Charles N. Steele  
General Counsel

BY:   
Deputy General Counsel

Enclosure:  
General Counsel's Report

PS Form 3811, Dec. 1980

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, 3, and 4.  
Add your address in the "RETURN TO" space  
on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
- ☒ Show to whom and date delivered ..... —¢
- ☐ Show to whom, date, and address of delivery.. —¢
2. ☐ RESTRICTED DELIVERY —¢  
(The restricted delivery fee is charged in addition to  
the return receipt fee.)

TOTAL \$ 1.00

3. ARTICLE ADDRESSED TO:

Julie Marks + Sham  
Rm. 101  
305 Third Ave  
New York, NY 10002

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED  
☒ CERTIFIED ☐ COD  
☐ EXPRESS MAIL

ARTICLE NUMBER

943864

(Always obtain signature of addressee or agent)

I have received the article described above

SIGNATURE ☐ Addressee ☐ Authorized agent

Julie Marks

5. DATE OF DELIVERY

1/23/87

POSTMARK

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S  
INITIALS

24-10-113-665





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 13, 1987

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Stanley S. Weithorn, Esquire  
Baer, Marks & Upham  
805 Third Avenue  
New York, NY 10022

RE: MUR 2213  
Guarino for Congress and  
Peter G. Isaacs, as  
treasurer

Dear Mr. Weithorn:

On December 23, 1986, the Office of General Counsel sent a letter to you regarding the disposition of your complaint in this matter. A copy of the General Counsel's Report was included at that time.

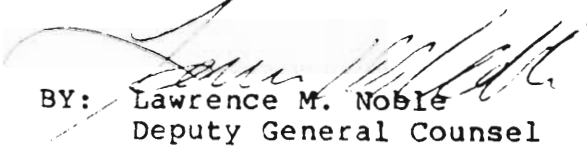
Please be advised that the letter of December 23, 1986, incorrectly stated that the Commission had found "no reason to believe" that a violation had occurred. In fact, on September 25, 1986, the Commission found reason to believe that the Guarino for Congress committee, and Peter G. Isaacs, as treasurer, violated 2 U.S.C. § 441d(a)(1) by failing to include a required disclaimer statement on a communication which expressly advocated the election of a clearly identified candidate and the defeat of another clearly identified candidate. However, after considering the circumstances of this matter, on November 18, 1986, the Commission determined to take no further action and closed its file.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8). Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

This Office regrets the fact that the letter sent to you misstated the Commission's action. Should you have any questions, please direct them to Laurence E. Tobey, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele  
General Counsel

  
BY: Lawrence M. Noble  
Deputy General Counsel

Enclosure:  
General Counsel's Report

3704034114