

MAR 10 2000

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 4538

Boston Capital Corporation

Herbert F. Collins

David Gasson

Gateway Management Corporation, f/k/a

American Investment Management, Inc.

Allan Rappuhn

**SENSITIVE**

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GENERAL COUNSEL'S REPORT #2

**I. ACTIONS RECOMMENDED**

take no action with respect to Mr. Gasson and close the file as to him, and take no action or no further action with respect to certain activities of the other respondents.

**II. BACKGROUND**

On March 10, 1999, the Commission found reason to believe that Boston Capital Corporation ("Boston Capital") and Herbert F. Collins, as a director, and Gateway Management Corporation, f/k/a American Investment Management ("Gateway Management") and Allan Rappuhn, as an officer and director, each violated 2 U.S.C. § 441b(a) in connection with the use of corporate resources to facilitate federal contributions to the Alabama Republican Party ("ARP").<sup>1</sup> In addition, the Commission

<sup>1</sup> Gateway Management was formerly known as American Investment Management, Inc. and was identified as such in the reason to believe certification. Counsel first informed this Office of the name change by letter dated April 9, 1999. According to a current Dun & Bradstreet report, Mr. Rappuhn is president of a company identified as "Gateway Mgmt Corp."

The ARP is the primary respondent in this matter. On March 10, 1999, the Commission found reason to believe that the ARP and its treasurer violated 2 U.S.C. §§ 434(b), 441a(a)(2)(A), 441a(f), 441b(a) and 11 C.F.R. § 102.5(a), by making excessive contributions to the campaign of Wayne Parker in 1996, by failing to report such contributions, and by making expenditures from a non-federal account

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found reason to believe that Allan Rappuhn violated 2 U.S.C. § 441a(a)(1)(A) by making a \$1,000 excessive contribution to Parker for Congress, the principal campaign committee of Wayne Parker, an unsuccessful candidate in Alabama's Fifth Congressional District in 1996. The Commission simultaneously approved subpoenas and orders directed to Boston Capital and Gateway Management to investigate the circumstances surrounding the activities in question. Pending the outcome of the investigation, the Commission voted to take no action against David Gasson, an employee at Boston Capital whose role in the activities was unclear, as well as U.S. Representative William R. Archer, who solicited funds on behalf of the ARP in 1996.<sup>2</sup> The Commission approved a subpoena and order directed to Rep. Archer to further investigate his fundraising activities. The Commission further voted to take no action at that time regarding allegations in the complaint that contributions to the ARP were actually earmarked for the Parker campaign.

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(footnote continued from previous page) containing impermissible funds in connection with a federal election. The Commission found reason to believe that Parker for Congress and its treasurer violated 2 U.S.C. §§ 441a(f) and 434(b) by accepting such contributions and by failing to report them. The evidence suggested that media advertisements paid for by the ARP may have been coordinated with Parker for Congress (the ARP had no available coordinated expenditure limit for the 1996 general election). The Commission approved subpoenas and questions directed to these respondents and other relevant witnesses. See First General Counsel's Report in this matter dated February 19, 1999, at 31-35. This Office will analyze the results of this investigation and make appropriate recommendations in a forthcoming separate report.

<sup>2</sup> The complaint in this matter alleged that Rep. Archer raised funds for "a massive television and radio advertising effort by the [ARP] to help in the election of Wayne Parker," Rep. Archer's son-in-law, "giv[ing] the appearance" that the advertisements were "not . . . independent expenditure[s], but carried out at the direction of Bill Archer." In a response to the complaint, Rep. Archer admitted that he "participated in raising money for the [ARP]" but denied any violations of the Act occurred. As set forth in footnote 1, another report is forthcoming.

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### **III. BOSTON CAPITAL RESPONDENTS**

#### **A. Results of Investigation**

Rep. Archer, who represents Texas' Seventh District in the U.S. Congress, is chairman of the House Committee on Ways and Means. In 1996, Rep. Archer introduced a proposal to terminate the Low Income Housing Tax Credit ("LIHTC"). The LIHTC had been created by the Tax Reform Act of 1986 as an alternate method of funding housing for low and moderate income households.<sup>3</sup> During 1996, Rep. Archer was also engaged in raising funds for the Alabama Republican Party. See footnote 2.

The continuance of the LIHTC is important to Boston Capital's business, as the company invests large amounts of equity capital for multifamily housing under the Federal Housing Tax Credit Program.<sup>4</sup> In an effort to secure the permanence of the LIHTC, an ad-hoc committee known as the Housing Advisory Group ("HAG") was established by Herbert Collins and other individuals and entities involved in the

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<sup>3</sup> The tax credits are used to leverage private capital into new construction or acquisition and rehabilitation of affordable housing. For a more comprehensive description of the LIHTC, see <<http://www.danter.com/taxcredit/about.htm>> (visited January 7, 2000). As explained more fully in the First General Counsel Report at 9, fn. 10, the bill containing Rep. Archer's proposal became the object of a deadlock between the President and Congress and never became law.

<sup>4</sup> Boston Capital bills itself as "the leading sponsor of tax credit funds" in the nation. <<http://www.bostoncapital.com>> (visited January 7, 2000).

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development, management and other areas related to low and moderate income housing. See Attachment 1 at 12, Attachment 2 at 16. Mr. Collins states in his discovery response that he and David Gasson, also of Boston Capital, were responsible for planning and running an October 2, 1996 meeting of the HAG at which discussions of the LIHTC were on the agenda. Attachment 1 at 12. Rep. Archer states in his response to a Commission subpoena and order that he spoke at the HAG meeting and was accompanied by his chief-of-staff, Donald Carlson. Attachment 3 at 5.<sup>5</sup>

Through a memorandum on Boston Capital letterhead dated September 18, 1996, Mr. Collins invited to the October 2, 1996 HAG meeting respondent Allan Rappuhn, president of Gateway Management Corporation (known at that time as American Investment Management, Inc.). Attachment 2 at 16. Gateway Management is in the business of managing low and moderate income apartment buildings and thus, like Boston Capital, had an interest in preserving the LIHTC. The HAG meeting memorandum also refers to "Chairman Archer and his efforts on behalf of the [ARP]," advises Mr. Rappuhn that "[a]nything you can do to assist us in this effort would be greatly appreciated," provides information about how to make contributions to the ARP, instructs that "[c]hecks should be sent to" David Gasson at Boston Capital's offices and that Mr. Rappuhn should call Mr. Gasson at Boston Capital if he has any questions. *Id.*

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<sup>5</sup> Mr. Collins states in his response that he "may have" met with Rep. Archer in the congressman's Washington, D.C. office, "and the topic would have been the [LIHTC] or the status of the tax bill." Attachment 1 at 9.

Rep. Archer produced over 100 pages of documents in response to the subpoena; only those that relate to the activities of the corporate respondents are included in Attachment 3. As stated in footnote 2, this Office will address Rep. Archer's activities more fully in a separate report.

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According to Mr. Rappuhn, Mr. Collins indicated in a September 1996 phone conversation that "he was raising funds for the ARP on behalf of Representative Archer and asked if I would be willing to assist a fundraising effort for the [ARP] by contacting colleagues who might also have an interest in making a contribution." Attachment 2 at 11. Mr. Collins states that the phone call was followed by two facsimiles sent to Mr. Rappuhn by either Mr. Collins, David Gasson or Mr. Collins' assistant at the time, Colleen Emsing. Attachment 1 at 10, 30. These facsimiles appear to have consisted of (1) the HAG meeting memorandum, Attachment 2 at 16, and (2) a follow-up memorandum from Mr. Gasson on Boston Capital letterhead dated September 25, 1996, requesting that contribution checks to the ARP be sent to Rep. Archer's residence.<sup>6</sup> *Id.* at 18-19.

Counsel claims that, while the Boston Capital respondents "do not know why the instructions [to send the checks to Boston Capital] were changed, they are aware that contributors were later instructed to send checks directly to William Archer at his home in Virginia. Respondents believe that these instructions may have been conveyed through facsimile or telephone conversation but have no record of these contacts." Attachment 1 at 30. Mr. Rappuhn states in his response that David Gasson of Boston Capital instructed him to forward all contributions directly to Rep. Archer due to "time considerations," see Attachment 2 at 9, which is supported by the memorandum from Mr. Gasson containing the revised instructions. *Id.* at 19.

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<sup>6</sup> The Collins response indicated that the facsimiles could not be located. Attachment 1 at 10. However, counsel subsequently confirmed that the facsimiles included the HAG memorandum, *id.* at 30, which had been attached to the complaint and also produced by Mr. Rappuhn.

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Mr. Collins originally stated that, "[t]o the best of [his] knowledge," no contributions to the ARP were collected or forwarded by Boston Capital. Attachment 1 at 6. However, since the September 25, 1996 memorandum from Mr. Gasson was dated later than some of the contribution checks, see Attachment 3 at 13, 14, 17 and 20, it would appear that some of the checks were first sent to Boston Capital before they were forwarded to Rep. Archer. When this timing was pointed out to counsel, counsel stated that the Boston Capital respondents do not know which contribution checks were collected and forwarded by them, and that they do not possess any relevant documents.<sup>7</sup>

Mr. Collins provided the names of 11 persons that he "may have solicited to contribute" to the ARP.<sup>8</sup> Attachment 1 at 5. Documents produced by Rep. Archer list Mr. Collins as the contact for most of these contributors, and identify several other persons that may have been solicited by Mr. Collins. Attachment 3 at 9-12. When subsequently asked about these additional persons, counsel for the Boston Capital respondents stated that "Respondents may have solicited Kevin Martin, Wendell Franklin and Thomas Runquist. If these individuals were solicited, they would likely have been contacted either by phone or through facsimile but Respondents have no record of these contacts." Attachment 1 at 31. The Commission's contributor index lists a \$1,000 contribution to the ARP from Kevin Martin on October 21, 1996. The index also shows

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<sup>7</sup> This information was provided by counsel in a phone conversation with staff of this Office on January 12, 2000.

<sup>8</sup> Mr. Collins also solicited contributions from Sheila and Christopher Collins, his wife and son. See Attachment 1 at 5. As these contributions appear to have been solicited by Mr. Collins in his personal capacity, *id.* at 31, they are not included in the above discussion of contributions facilitated by Boston Capital.

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a \$500 contribution to the ARP from Thomas Runquist on October 16, 1996, which corresponds with a copy of a contribution check produced by Rep. Archer. Attachment 3 at 25. The index does not show any contributions to the ARP from Wendell Franklin, or from any other persons identified in the Archer documents as having been contacted by Mr. Collins.<sup>9</sup>

In reviewing the information obtained from all respondents and witnesses, as well as cross-checking the Commission's contributor index and the ARP's disclosure reports, this Office believes the following is a complete and accurate list of the contributors solicited by Mr. Collins and Boston Capital, including the amount and date of their contributions:

<u>Contributor</u> <sup>10</sup>	<u>Amount</u>	<u>Date reported by the ARP</u>
Lawrence H. Friedman	\$500	10/04/96
Robert M. Arcand	\$1,000	10/04/96
Michael J. Menzer	\$1,000	10/04/96
Robert M. Bobinchuck	\$1,000	10/04/96
Charles N. Mady	\$1,000	10/04/96
Charles B. Palmer	\$1,000	10/04/96
Murray A. Calhoun	\$1,000	10/04/96
Carmella Laurella	\$1,000	10/04/96
Patrick L. Barbolla	\$500	10/04/96
Glenn A. Solsrud	\$500	10/09/96
Allan Rappuhn	\$1,000	10/09/96
Thomas Runquist	\$500	10/16/96
Kevin Martin	\$1,000	10/21/96
<b>TOTAL:</b>	<b>\$11,000</b>	

<sup>9</sup> Certain persons identified in the Archer documents as having been contacted by Mr. Collins were actually contacted by Mr. Rappuhn, as discussed in Section IV *infra*.

<sup>10</sup> All of these contributors appear to be involved in some segment of the housing industry which presumably would be adversely impacted by the LIHTC's termination. See Attachment 1 at 17-22; First General Counsel's Report at 14-18.

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### **C. Remaining Issues**

With regard to the allegation in the complaint that the ARP contributions were illegally earmarked for the Parker campaign, the Boston Capital respondents have previously argued that "the funds were being raised for the [ARP], not Wayne Parker." The copies of contribution checks solicited by the Boston Capital respondents (which were produced by Rep. Archer) do not contain any express or implied designation that they be spent on Mr. Parker's behalf, *see* 11 C.F.R. § 110.6(b)(1), and the evidence is inconclusive as to whether these specific funds were actually used in this manner by the ARP. See footnotes 1 and 2. Accordingly, this Office recommends that the Commission take no action against Herbert F. Collins and Boston Capital Corporation with respect to the allegation of improper earmarking.

Regarding the activities of David Gasson, the evidence appears insufficient to support *de facto* officer liability under 2 U.S.C. § 441b(a); rather, it appears that Mr. Gasson acted as an employee following the instructions of Mr. Collins, and not on his own initiative. According to counsel, Mr. Gasson did not become an actual officer at Boston Capital until February 1998, *see* Attachment 1 at 31, approximately one and a half years after he assisted Mr. Collins in the company's fundraising efforts on behalf of the ARP. Based on the evidence in hand and on counsel's representations, this Office

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recommends that the Commission take no action against Mr. Gasson and close the file as to him.

#### **IV. GATEWAY MANAGEMENT RESPONDENTS**

##### **A. Results of Investigation**

The involvement of Gateway Management and its president and sole director, Allan Rappuhn, in the fundraising activities at issue stems from a phone call from Herbert Collins, on or about September 16, 1996, advising Mr. Rappuhn that Mr. Collins "was raising funds for the ARP on behalf of Representative Archer," and requesting Mr. Rappuhn "to assist a fundraising effort for the [ARP] by contacting colleagues who might also have an interest in making a contribution." Attachment 2 at 11. Mr. Collins reiterated this request in the HAG meeting memorandum dated September 18, 1996. *Id.* at 16. By facsimile dated September 24, 1996, Mr. Rappuhn sent a solicitation memorandum to nine persons on American Investment Management, Inc. letterhead (the former name of Gateway Management). *Id.* at 17. This Office's investigation, which included informal contacts with these persons, revealed that they are all involved in various segments of the housing industry impacted by the LIHTC.

The solicitation memorandum states "I have been asked by Herb Collins to assist in raising funds that U.S. Representative Bill Archer . . . will be giving to the [ARP]," and requests that contributions be sent to Mr. Rappuhn "so that I can forward them to Mr. Archer." *Id.* The only address provided in the memorandum is the corporate address. The memorandum concludes "Thanks for your help. I believe this to be a very worthy cause in our fight to convince Representative Archer to stop his efforts to Sunset the Tax Credits."

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On October 2, 1996, Mr. Rappuhn sent another memorandum to five of the nine persons listed in the previous memorandum, requesting that they forward their checks to him. Attachment 2 at 20. The only address appearing on the letter is that of Mr. Rappuhn's corporation, which is printed as part of the letterhead. On that same day, Mr. Rappuhn forwarded \$2,500 in contribution checks to Rep. Archer that he solicited and collected on behalf of the ARP. In a letter on corporate letterhead accompanying the forwarded contributions, a copy of which was sent to Mr. Collins, Mr. Rappuhn informs Rep. Archer that "[e]ach of these contributors are committed to the continued success of the [LIHTC]." *Id.* at 21. On October 7, 1996, Mr. Rappuhn forwarded ARP contribution checks to Rep. Archer totaling \$1,800. *Id.* at 22. Mr. Rappuhn's signature in the letters accompanying the contributions is followed by his title as "President" of the corporation.

Counsel states that Mr. Rappuhn "called and sent out nine facsimiles to prospective contributors requesting support for the [ARP]. Six individuals responded and contributed a total of \$3,300." Attachment 2 at 3. Mr. Rappuhn has identified the persons he solicited to contribute to the ARP and has listed the contributions forwarded by him. *Id.* at 6-8. Because the Commission's contributor index could confirm that only three of these persons made contributions to the ARP during the relevant time frame, this Office informally contacted the contributors identified in the responses. It appears that only the first set of contributions, i.e., the \$2,500 referred to in Mr. Rappuhn's October 2, 1996 letter to Rep. Archer, see Attachment 2 at 21, was deposited by the ARP. These included a \$1,000 contribution from Mr. Rappuhn and \$1,500 in contributions from the following persons:

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<u>Contributor</u> <sup>14</sup>	<u>Amount</u>	<u>Date reported by the ARP</u>
Doug Hollyhand	\$500	10/09/96
Mark English	\$500	10/09/96
William M. Dinsmore	\$500	10/09/96
<b>TOTAL:</b>	<b>\$1,500</b>	

Counsel later indicated that the checks forwarded by Mr. Rappuhn on October 7, 1996, see Attachment 2 at 22, were returned uncashed without explanation. *Id.* at 26. This Office's informal contacts with the contributors revealed that these checks were returned by the ARP due to adverse publicity, which is supported by Mr. Rappuhn's assertion that Mr. Collins "informed me [on or about October 8, 1996] that the press had a copy" of two of the solicitation letters. *Id.* at 11-12 (response to Question 9.b.5).

<sup>14</sup> Mr. Rappuhn's responses indicate that he collected and forwarded, but did not directly solicit, the check from William Dinsmore. Attachment 2 at 6-8. This Office learned during informal contacts with the contributors that Mr. Dinsmore received Mr. Rappuhn's solicitation letter from Dale Taylor, who is listed as a recipient of the faxed letter. Attachment 2 at 17. Also, although Mr. Rappuhn's own contribution check was among those forwarded to Rep. Archer, since it was solicited by the Boston Capital respondents it is included in that analysis rather than in this section. See p. 7 *supra*.

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### C. Remaining Issues

In addition to the reason to believe finding that Mr. Rappuhn violated 2 U.S.C. § 441b(a), the Commission found reason to believe that he made a \$1,000 excessive contribution to Parker for Congress, in violation of 2 U.S.C. § 441a(a)(1)(A), through the operation of 11 C.F.R. § 110.1(h). This section of the Commission's regulations permits a person who contributes to an authorized committee to also contribute to another committee supporting the same candidate in the same election, so long as (1) the second committee is not an authorized committee of the candidate, (2) the contributor has no knowledge of how his or her contribution, or at least a significant portion of it, will be used, and (3) the contributor relinquishes control of the funds given to the second committee.

Parker for Congress reported receiving a contribution of \$1,000, the maximum legal amount, from Mr. Rappuhn on September 18, 1996. By check dated September 29, 1996, Mr. Rappuhn then contributed \$1,000 to the ARP. Attachment 2 at 28. Rappuhn's first solicitation letter, *id.* at 17, indicates that he was under the impression that his contribution to the ARP would be used to support Wayne Parker's candidacy. The letter begins with the heading, "\$ Contributions To Alabama State Republican Party *On Behalf Of U.S. Representative Bill Archer And Wayne Parker*" (emphasis added), and states that the ARP contributions will go toward funds that "[p]resumably . . . will be used by the State Party to help in the election of Wayne Parker (Bill Archer's son in law) in his bid to unseat U.S. Representative Bud Cramer." While the letter on its face reflects either knowledge or belief on Mr. Rappuhn's part that the money raised would be expended on behalf of Wayne Parker, *see* First General Counsel Report at 40-41, counsel has stated

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that Mr. Rappuhn "had no knowledge how his contribution would be used . . . . He had received no specific assurance or even information from the Party or anyone related to the Party regarding the intended use of the funds." Attachment 2 at 2.

Even if Mr. Rappuhn's ARP contribution might not meet one of the three requirements in 11 C.F.R. § 110.1(h) (i.e., no prior knowledge), it is still unclear at this stage of the investigation whether these specific funds were actually expended by the ARP on behalf of Wayne Parker. See footnotes 1 and 2. In the interest of resolving this matter as it pertains to the corporate respondents, and because this Office considers the improper facilitation by the Gateway Management respondents to be the more serious violation, this Office recommends that the Commission take no further action against Allan Rappuhn regarding the reason to believe finding that he violated 2 U.S.C. § 441a(a)(1)(A).

With regard to the allegation in the complaint that the ARP contributions were illegally earmarked for the Parker campaign, the Gateway Management respondents have previously argued that Mr. Rappuhn had no control or authority over how the ARP would expend the funds contributed. In a sworn declaration attached to his response to the complaint, Mr. Rappuhn avers that he did not suggest to the ARP that the contributions "were intended or directed to support any particular candidate" and that he understood "that the funds would be used to support the [ARP's] general candidate activities." See First General Counsel's Report at 38. In response to the reason to believe findings, counsel asserted that "Mr. Rappuhn relinquished control of the funds he contributed," that he "did not provide any instructions or advice on how to use the funds," and that "he has no information regarding how they were used." Attachment 2 at 2. This Office has no

direct evidence to the contrary; moreover, as noted above, the evidence is inconclusive as to whether the funds raised by the Gateway Management respondents were actually spent on behalf of the Parker campaign. See footnotes 1 and 2. Accordingly, this Office recommends that the Commission take no action against Allan Rappuhn and Gateway Management Corporation with regard to the allegation of improper earmarking.

**V. RECOMMENDATIONS**

- 1.
2. Take no action against Boston Capital Corporation and Herbert F. Collins with regard to the allegation of improper earmarking.
3. Take no action against David Gasson and close the file with respect to him.
- 4.
5. Take no further action against Allan Rappuhn with regard to his personal contribution to the Alabama Republican Party.
6. Take no action against Allan Rappuhn and Gateway Management Corporation, f/k/a American Investment Management, Inc., and Allan Rappuhn with regard to the allegation of improper earmarking.

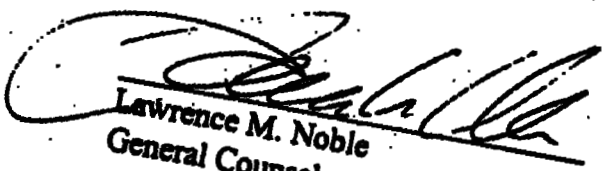
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7. Approve the appropriate letters.

Date

3/9/00

  
Lawrence M. Noble  
General Counsel

Staff Assigned: Thomas J. Andersen

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