



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

JUL 20 2007

Earl Allen Haywood

Washington, DC 20003

RE: MUR 5610

Dear Mr. Haywood:

On July 5, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted on your behalf in settlement of violations of 2 U.S.C. §§ 432(b)(3), (c)(5), 434(b)(4)(H)(v), (6)(B)(v), 439a(b), 441b(a), and 11 C.F.R. § 103.3(b), provisions of the Federal Election Campaign Act of 1971, as amended, and Commission regulations. Accordingly, the file has been closed in this matter. Please be advised that the civil penalty in this agreement reflects unusual factors brought forth during the investigation.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the first installment of the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Ana J. Peña-Wallace".

Ana J. Peña-Wallace
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 5610

Earl Allen Haywood)

CONCILIATION AGREEMENT

This matter was generated based on information ascertained by the Federal Election

Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Based upon available information, the Commission found reason to believe Earl Allen Haywood ("Respondent" or "Haywood") knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c)(5), (h)(1), 434(b)(4)(H)(v), (6)(B)(v), 439a(b), and 441b, and 11 C.F.R. § 103.3(b).¹

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

¹ The facts that are the subject of this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub L No 107-55, 116 Stat 81 (2002). BCRA did not substantively alter the provisions of the Federal Election Campaign Act of 1971, as amended, relevant to the facts in this matter. All statements of the law that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations hereunder.

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1 1. The Dole North Carolina Victory Committee (“the DNCVC”) was a joint
2 fundraising committee that raised funds for two participating political committees, the Dole 2002
3 Committee, Inc. and the North Carolina Republican Party.

4 2. The North Carolina’s Salute to George W. Bush Committee, Inc. (“the
5 Salute Committee”), was a joint fundraising committee that raised funds for three participating
6 political committees, the Dole 2002 Committee, Inc., the North Carolina Republican Party, and
7 Hayes for Congress.

8 3. At all relevant times, Earl Allen Haywood was the Assistant Treasurer for
9 the DNCVC and the Salute Committee.

10 4. The Act requires a committee treasurer to keep an account of the name,
11 address, date, amount, and purpose of all disbursements made by the committee and to keep
12 copies of receipts, invoices or cancelled checks for all disbursements that exceed \$200. 2 U.S.C.
13 § 432(c)(5). The Act also requires a treasurer to file reports with the Commission that disclose
14 such information and that report the total amount of Committee disbursements. 2 U.S.C.
15 §§ 434(b)(4)(H)(v) and (6)(B)(v).

16 5. The Act prohibits commingling committee funds with “the personal funds
17 of any individual,” 2 U.S.C. § 432(b)(3), which includes commingling with the personal funds of
18 officers of a committee. *See* 11 C.F.R. § 102.15.

19 6. The Act prohibits an individual from converting contributions or
20 donations for the individual’s personal use. 2 U.S.C. § 439a(b)(1). This provision prohibits “any
21 person” from using campaign funds for personal use. *Id.*; 2 U.S.C. § 431(11) (defining “person”
22 under the Act). The Act sets forth examples of *per se* instances of improper personal use, such
23 as using campaign contributions or donations for mortgage or rental payments, clothing
24 expenses, or household food items. *See* 2 U.S.C. § 439a(b)(2)(A)-(I); *see also* 11 C.F.R.

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§ 113.1(g). In addition, the Act considers a contribution or donation improperly converted for personal use if “the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective” of the campaign. 2 U.S.C. § 439a(b)(2).

7. It is unlawful for any candidate, political committee, or other person knowingly to accept or receive any contribution from a corporation. 2 U.S.C. § 441b(a).

Further, once a political committee encounters a possible prohibited corporate contribution among the contributions received, the contribution must either be refunded or deposited into the committee’s campaign bank account within 10 days of the treasurer’s receipt while the treasurer determines whether it is permissible. 11 C.F.R. § 103.3(b)(1). Commission regulations also require the treasurer to make at least one written or oral request for evidence of legality and if not able to determine the legality of the contribution, refund the questionable contribution within 30 days of receipt. *Id.*

8. The phrase knowing and willful indicates that “actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *see also Federal Election Comm’n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between “knowing” and “knowing and willful”). A knowing and willful violation may be established “by proof that the defendant acted deliberately and with knowledge” that an action was unlawful. *United States v Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

9. Haywood was hired by the DNCVC and the Salute Committee to perform their compliance functions. As Assistant Treasurer, Haywood’s duties were supposed to include maintaining the committees’ financial and bank records, completing and filing reports with the Commission, and reattributing/redesignating funds. However, for all intents and purposes, he served as the *de facto* treasurer for both committees and was also responsible for processing and

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1 depositing contributions, making disbursements, maintaining the bank account, completing
2 disclosure forms, signing reports and filing them with the Commission.

3 10. Between March 2002 and May 2003, Haywood wrote checks payable to
4 himself totaling approximately \$155,750 from the DNCVC's bank account and \$18,975 from the
5 Salute Committee's bank account, designating himself as payee, and used the funds for his own
6 personal use.

7 11. Haywood failed to keep an account of the name, address, date, amount,
8 and purpose of those disbursements made by the Committee and failed to keep copies of receipt
9 invoices or cancelled checks for all disbursements that exceeded \$200. Likewise, he failed to
10 file reports with the Commission that disclosed such information and that accurately reported the
11 total amount of committee disbursements. Haywood also issued payments to himself and failed
12 to account for those disbursements in committee records or report them to the Commission.
13 Haywood failed to report \$128,250 out of approximately \$155,750 in disbursements to himself
14 from the DNCVC's account and \$18,975 in disbursements to himself from the Salute
15 Committee's account.

16 12. In addition, Haywood has acknowledged that he wrote checks to himself
17 from the committee accounts and deposited them into his own bank account, thereby knowingly
18 commingling committee funds with his own. Haywood also knowingly converted campaign
19 funds for his own personal use by writing checks to himself to pay personal expenses.

20 13. Finally, Haywood deposited checks that he believed were corporate
21 checks, into the DNCVC's bank account. Haywood knew that it would be impermissible for the
22 Committee to receive or deposit corporate checks. Although the corporate checks were received
23 from June 2002 through November 2002, he did not deposit them until various points between

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1 January 2003 and April 2003, and did very little or nothing during those intervening months to
2 correct the improper deposits or to refund the checks.

3 14. Haywood ultimately pled guilty to one count of Mail Fraud, a felony
4 offense, and Aiding and Abetting in violation of 18 U.S.C. §§ 2 and 1341, in connection with
5 this activity, was sentenced to 18 months in prison and did serve 14 months in prison and two
6 months in a halfway house, was sentenced to a period of probation supervision, and was ordered
7 to pay restitution to the DNCVC, in the amount of \$123,000.

8 V. Respondent knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c)(5),
9 434(b)(4)(H)(v), (6)(B)(v), 439a(b), and 441b, and 11 C.F.R. § 103.3(b).

10 VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in
11 the amount of Five Thousand Dollars (\$5,000), pursuant to 2 U.S.C. § 437g(a)(5)(B), in two
12 payments:

13 A. An initial payment of One Thousand Dollars (\$1,000) is due within
14 thirty (30) days of the effective date of this agreement.

15 B. Respondent shall pay a second payment of Four Thousand Dollars
16 (\$4,000) within sixty (60) days of the first payment.

17 2. Respondent will cease and desist from violating 2 U.S.C. §§ 432(b)(3),
18 (c)(5), 434(b)(4)(H)(v), (6)(B)(v), 439a(b), and 441b and 11 C.F.R. § 103.3(b).

19 3. Respondent is prohibited from working or volunteering in federal political
20 campaigns in a capacity involving the committee's fundraising or finances for a period of
21 10 years from the date of this agreement.

22 VII. Respondent Earl Allen Haywood, through the submission of extensive financial
23 documentation to the Commission and additional representations, has indicated that financial
24 hardship prevents him from paying a significant civil penalty to the Commission. By signing

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1 this agreement, the Respondent represents that he has insufficient assets and income out of which
2 he could pay a significant civil penalty, that he has an annual salary of \$20,000, that he has
3 undisputed debts in excess of \$600,000, which include back taxes, restitution he is paying to the
4 DNCVC, arrears in his mortgage, and assorted other debts such as legal fees, and that materials
5 he has submitted to the Commission to demonstrate his financial condition, including a financial
6 affidavit, fairly represent his financial condition. The Commission regards these submissions
7 and representations as material representations. Due to the mitigating circumstances presented
8 by Respondent Haywood's financial condition, his criminal conviction to related charges, and his
9 cooperation with the Commission during the investigation of this matter, the Commission agrees
10 to depart substantially from the civil penalty that the Commission would ordinarily accept for
11 this type of activity. If evidence is uncovered indicating Respondent's financial condition is not
12 as stated, a civil penalty of Two Hundred and Sixty-Two Thousand Dollars (\$262,000) shall be
13 immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

14 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
15 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
16 with this agreement. If the Commission believes that this agreement or any requirement thereof
17 has been violated, it may institute a civil action for relief in the United States District Court for
18 the District of Columbia.

19 IX. This agreement shall become effective as of the date that all parties hereto have
20 executed same and the Commission has approved the entire agreement.


21 X. Except as provided in Section VI.1 of this agreement, Respondent shall have no
22 more than 30 days from the date this agreement becomes effective to comply with and
23 implement the requirements contained in this agreement and to so notify the Commission.
24

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Thomasenia P. Duncan
~~Acting~~ General Counsel

BY:


Ann Marie Terzaken
Acting Associate General Counsel
for Enforcement

7/20/07
Date

FOR THE RESPONDENT:


(Name)
(Position)

Aug 31, 2007
Date

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