

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the matter of)

SENSITIVE

5)
6 11-2001 LLC d/b/a Hyundai of)
7 North Jacksonville)

8)
9 Sam Kazran)

MUR 6054

10
11 **GENERAL COUNSEL'S REPORT #7**

12
13 **I. ACTIONS RECOMMENDED:** (1) Find probable cause to believe that 11-2001 LLC
14 d/b/a Hyundai of North Jacksonville knowingly and willfully violated 2 U.S.C. §§ 441f and
15 441a(a); (2) find probable cause to believe that Sam Kazran knowingly and willfully violated
16 2 U.S.C. § 441f; and (3) approve the attached conciliation agreement.

17 **II. BACKGROUND**

18 This matter concerns campaign contributions received by Vern Buchanan for Congress
19 ("VBFC" or "Committee") during the 2006 and 2008 election cycles that were reimbursed with
20 the funds of car dealerships in which Representative Vern Buchanan ("Buchanan") currently
21 holds, or previously held, a majority ownership interest. One of those car dealerships is 11-2001
22 LLC d/b/a Hyundai of North Jacksonville ("HNJ"). Sam Kazran was Buchanan's minority
23 partner at HNJ during the time period when the reimbursements occurred.

24 On June 23, 2009, the Commission found reason to believe that HNJ and Kazran
25 knowingly and willfully violated 2 U.S.C. § 441f. Additionally, because we had no information
26 at that time regarding whether HNJ was treated by the Internal Revenue Service as a corporation
27 or a partnership, *see* 11 C.F.R. § 110.1(g), we recommended and the Commission found reason
28 to believe that HNJ knowingly and willfully violated 2 U.S.C. §§ 441a(a) or 441b(a), and

1 authorized an investigation. The investigation in this matter has uncovered a total of \$67,900 in
2 reimbursed contributions to VBFC using HNJ funds during the 2006 and 2008 election cycles.

3 On July 16, 2010, this Office served the General Counsel's Briefs, incorporated herein by
4 reference, on HNJ and Kazran. The GC Briefs set forth the factual and legal basis upon which
5 this Office recommends that the Commission find probable cause to believe that Kazran and
6 HNJ violated the Act. Kazran and HNJ are not represented by counsel and have not submitted a
7 response to the General Counsel's Briefs.¹

8 **III. ANALYSIS**

9 **A. KAZRAN ASSISTED HNJ IN MAKING CONTRIBUTIONS IN THE**
10 **NAME OF ANOTHER IN VIOLATION OF 2 U.S.C. § 441f**
11

12 The Federal Election Campaign Act of 1971, as amended ("Act"), provides that no
13 person shall make a contribution in the name of another person or knowingly permit his or her
14 name to be used to effect such a contribution. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(i). This
15 prohibition further provides that no person shall knowingly help or assist any person in making a
16 contribution in the name of another. See 11 C.F.R. § 110.4(b)(1)(iii). Contributions in the name
17 of another include giving money, all or part of which is provided to the contributor by another
18 person (the true contributor) without disclosing the source of money to the recipient candidate or
19 committee at the time the contribution is made. 11 C.F.R. § 110.4(b)(2)(i).

20 Kazran admitted that he instructed his employees to make contributions to VBFC and
21 that he told HNJ's controller to reimburse those employees using HNJ funds. Kazran also
22 admitted that he used HNJ funds to reimburse his brother and business partners and their spouses

¹ The General Counsel's briefs were delivered to Kazran's home by Federal Express on July 19, 2010. We followed up by sending a letter to Kazran on July 23, 2010, via Federal Express, reminding him that the time to file reply briefs would expire on August 3, 2010. Federal Express confirmed that Kazran received, and signed for, the letter on July 24, 2010.

12044311150

1 for their contributions to VBFC. By using HNJ funds to reimburse contributions to VBFC,
2 Kazran made HNJ the actual contributor to VBFC. The employees and other individuals who
3 were reimbursed with HNJ funds were merely the conduits for HNJ's contributions, and their
4 names were used to disguise the true source of the contributions. Accordingly, the evidence
5 shows that Kazran knowingly assisted HNJ in making contributions in the names of others in
6 violation of 2 U.S.C. § 441f. Thus, there is probable cause to believe that Kazran and HNJ
7 violated 2 U.S.C. § 441f.

8 **B. HNJ MADE AN EXCESSIVE CONTRIBUTION IN VIOLATION OF**
9 **2 U.S.C. § 441a(a)**
10

11 The investigation in this matter has shown that HNJ elects to be treated as a partnership
12 by the Internal Revenue Service, and thus its contributions are considered to be contributions
13 from a partnership pursuant to 11 C.F.R. § 110.1(e). *See* 11 C.F.R. § 110.1(g)(2). Thus, HNJ's
14 contributions are attributed to both the partners and the partnership itself, that is, the partnership
15 itself is subject to the contribution limit in effect at the time for individuals.² *See* 11 C.F.R.
16 § 110.1(e). In the 2006 election cycle, the individual contribution limit for giving to candidate
17 committees was \$2,100 per election. In the 2008 the contribution limit was \$2,300 per election
18 Accordingly, an LLC taxed as a partnership that reimbursed contributions totaling more than
19 \$4,200 (in the 2006 cycle) or \$4,600 (in the 2008 cycle) would have also made an excessive
20 contribution in violation of 2 U.S.C. § 441a(a).

21 During the 2006 election cycle, HNJ contributed \$49,500 to VBFC, which exceeded the
22 \$4,200 limit it could have permissibly contributed with unreimbursed funds by \$45,300. During

² During the years that HNJ reimbursed contributions to VBFC (2005 – 2007), Buchanan, through 1099 Management Company, LLC, held a fifty-one percent (51%) interest in HNJ. Kazran was Buchanan's minority partner and held a forty-nine percent (49%) in HNJ. HNJ's contributions to VBFC are attributed to Buchanan and Kazran in direct proportion to their respective share of partnership profits. *See* 11 C.F.R. § 110.1(e).

12044311151

1 the 2008 election cycle, HNJ contributed \$18,400 to VBFC, which exceeded the \$4,600 limit it
2 could have permissibly contributed with unreimbursed funds by \$13,800.

3 **C. KAZRAN'S AND HNJ'S VIOLATIONS WERE KNOWING AND WILLFUL**

4 The circumstances indicate that HNJ and Kazran's violations were knowing and willful.
5 The phrase "knowing and willful" indicates that "acts were committed with a knowledge of all
6 the relevant facts and a recognition that the action is prohibited by law...." H.R. Rpt. 94-917 at
7 3-4 (Mar. 17, 1976) (reprinted in Legislative History of Federal Election Campaign Act
8 Amendments of 1976 at 803-04 (Aug. 1977)); see also *National Right to Work Comm. v. FEC*,
9 716 F.2d 1401, 1403 (D.C. Cir. 1983) (citing *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101 (D.C. Cir.
10 1980) for the proposition that "knowing and willful" means "'defiance' or 'knowing, conscious,
11 and deliberate flaunting' [sic] of the Act"); *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th
12 Cir. 1990). The *Hopkins* court also held that taking steps to disguise the source of funds used in
13 illegal activities might reasonably be explained as a "motivation to evade lawful obligations."
14 *Hopkins*, 916 F.2d at 213-14 (citing *Ingram v. United States*, 360 U.S. 672, 679 (1959)) (internal
15 quotations omitted).

16 Kazran testified that he did not know that what Buchanan instructed him to do was illegal
17 and that if Buchanan had told him it was illegal he would not have gotten involved. Kazran
18 Depo at 87-88. However, the undisputed circumstances indicate that Kazran's and HNJ's
19 violations were in fact knowing and willful. Kazran, president of HNJ and Buchanan's minority
20 partner in HNJ, directed a subordinate, the HNJ controller, to write the reimbursement checks
21 which in many cases were given to the employees on the same day they wrote contribution
22 checks to VBFC. Thus, Kazran was aware that HNJ was the actual contributor to VBFC, not his
23 employees and business partners and their spouses who wrote checks in amounts he directed.

12044311152

1 This was no isolated incident; Kazran carried out this arrangement over the course of three years,
2 2005-2007, for a total amount of \$67,900 in contributions made in the name of another.

3 According to his testimony, Kazran was also aware of Buchanan's desire to show that
4 other people, not just Buchanan himself, supported Buchanan's campaign with contributions.
5 See Kazran Depo at 44. Even if Buchanan directed Kazran to reimburse contributions to his
6 campaign or had leverage over Kazran as his majority partner or the holder of Kazran debt,
7 Kazran is still responsible for his own actions.

8 Kazran knew that VBFC would report the contributions in the names of HNJ employees
9 and family members, not HNJ. See *id.* at 32-33. Therefore, Kazran took steps to disguise the
10 source of funds used in illegal activities that might reasonably be explained as a "motivation to
11 evade lawful obligations." See *Hopkins*, 916 F.2d at 213-14.

12 The evidence in this matter further shows that Kazran's business partner and controller
13 raised questions about the propriety of the reimbursements. Josh Farid told Kazran that what
14 Buchanan asked Kazran to do was improper. Gail Lephart told Kazran that she was concerned
15 about company funds being used to reimburse contributions, but Kazran only responded with a
16 shrug. Kazran's continuation of an activity that his own associates opined was improper, with
17 his likely awareness that the activity involved deceptive reporting, is further evidence that
18 Kazran's conduct was knowing and willful.

19 HNJ was aware, through Kazran, of all of these circumstances. In sum, the evidence in
20 this matter shows that Sam Kazran and HNJ were aware that they were violating the law by
21 using HNJ funds to make contributions in the names of others.

12044311153

D. RECOMMENDATIONS

Based upon the discussion above, and the reasons set forth in the GC Briefs, we recommend that the Commission find probable cause to believe that 11-2001 LLC d/b/a Hyundai of North Jacksonville and Sam Kazran knowingly and willfully violated 2 U.S.C. § 441f by making \$67,900 in contributions to VBFC in the name of another, and HNJ knowingly and willfully violated 2 U.S.C. § 441a(a) by contributing to VBFC more than \$2,100 per election in the 2006 and \$2,300 per election in the 2008 election cycle.

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

A proposed conciliation agreement covering the violations committed by Sam Kazran and HNJ is attached.

12044311154

12044311155

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20
 - 21
 - 22
-

12044311156

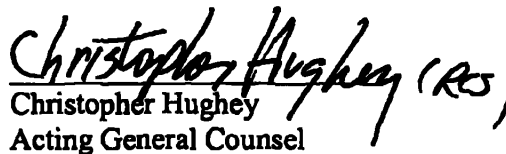
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19

V. RECOMMENDATIONS

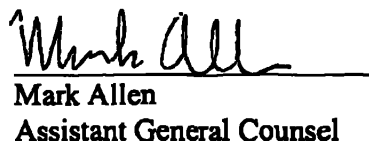
1. Find probable cause to believe that 11-2001 LLC d/b/a Hyundai of North Jacksonville knowingly and willfully violated 2 U.S.C. § 441f.
2. Find probable cause to believe that 11-2001 LLC d/b/a Hyundai of North Jacksonville knowingly and willfully violated 2 U.S.C. § 441a(a).
3. Find probable cause to believe that Sam Kazran knowingly and willfully violated 2 U.S.C. § 441f.
4. Approve the attached conciliation agreement.
5. Approve the appropriate letter.

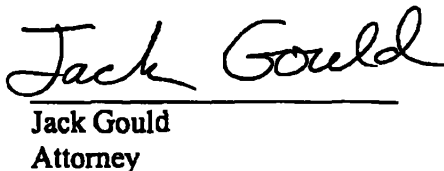
8/31/10

Date


Christopher Hughey
Acting General Counsel


Stephen A. Gura
Deputy Associate General Counsel


Mark Allen
Assistant General Counsel


Jack Gould
Attorney

12044311157