10044274248

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 15 2009

Philip Russell, Esq.
Philip Russell, LLC
66 Field Point Rd.
Greenwich, CT 06836

RE: MUR 6162
Michael Sohn

Dear Mr. Russell:

On January 29, 2009, the Federal Election Commission notified your client, Michael Sohn, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on August 26, 2009, found that there is reason to believe Michael Sohn knowingly and willfully violated 2 U.S.C. § 439a(b), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 have any questions, please contact Phillip Olaya, the attorney assigned to this matter, at (202) 694-1650.

10044274249

On behalf of the Commission,

Steven T. Walther
Chairman

Enclosure
Factual and Legal Analysis

10044274250

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4
5 **MUR 6162**
6
7
8 **RESPONDENT: Michael Sohn**
9
10
11 **I. FACTUAL BACKGROUND**

12 This matter was initiated by a complaint by former Congressman Christopher
13 Shays to report that a former campaign manager, Michael Sohn ("Sohn" or
14 "Respondent"), misappropriated committee funds that resulted in violations of the Act by
15 both the Committee and Sohn. *See* MUR 6162 Complaint (Michael Sohn).

16 Christopher Shays for Congress Committee was the authorized campaign
17 committee of former Republican House Member Christopher Shays for various
18 successive elections, including the 2008 election cycle.[1] Since May 2009, Christopher
19 Shays has served as the Committee's treasurer. Michael Sohn, who joined the
20 Committee's staff in 2001 and served as the campaign manager for three election cycles,
21 was responsible for day-to-day operations and the initial approval of expenditures. *Id.* at
22 2.

23 Committee procedures required Sohn to submit requests for payment of approved
24 expenditures to the Committee's then-treasurer, Ralph DePanfilis, who had sole authority
25 to sign Committee checks. *Id.* at 2-3. In late 2008, the Committee's routine review of
26 financial records revealed several inconsistencies that DePanfilis was unable to reconcile.
27 *Id.* In late November 2008, after several failed attempts to meet with Sohn, DePanfilis

[1] The Committee is still registered with the Commission and continues to raise funds and file reports with the Commission. As of March 31, 2009, the Committee reported over $199,000 in debts and obligations and just over $3,000 cash-on-hand.

10044274251

1 decided to personally inspect Committee records at the bank. *Id.* During that meeting,
2 DePanfilis presented the bank with the records provided to him by Sohn, and the bank
3 determined, after examining its own records, that the records DePanfilis presented had
4 been altered. Further, it appeared that someone, presumably Sohn, had forged
5 DePanfilis's signature on numerous Committee checks. *Id.* at 3.

6 The Committee's internal review revealed that Sohn forged DePanfilis's signature
7 on Committee checks payable to Sohn that totaled approximately $55,000 in 2007 and
8 $27,000 in 2008, and that Sohn made unauthorized debit card cash withdrawals of
9 approximately $20,000 in 2007 and approximately $49,000 in 2008.[2] *Id.* Although the
10 Committee's submission indicates that Sohn also used the debit card for personal
11 expenses, there currently is no reliable estimate as to the amount of additional
12 unauthorized expenses. *Id.* at 5. Lastly, the Committee noted that Sohn allegedly deleted
13 items from the Committee's bank statements and failed to record contributions or
14 removed records of contributions from the Committee's internal database to balance the
15 cash in the Committee's account. *Id.*

16 **II. ANALYSIS**

17 The Act prohibits any person from converting contributions to a Federal candidate
18 for personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a
19 campaign account of a federal candidate to fulfill a commitment, obligation or expense of
20 any person that would exist irrespective of the candidate's campaign duties. 11 C.F.R. §
21 113.1(g). The term "person" includes individuals and committees. 2 U.S.C. § 431(11).

[2] The amended reports reflect slightly different totals for both the unauthorized checks ($58,385.48 in 2007 and $33,498.54 in 2008) and the unauthorized cash withdrawals ($19,520.20 in 2007 and $45,166.25 in 2008).

10044274252

The Act also addresses violations that are knowing and willful. *See* 2 U.S.C. § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is violating the law. The phrase "knowing and willful" indicates that "acts were committed with full knowledge of all of the relevant facts and a recognition that the action is prohibited by law. . ." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *see also AFL-CIO v. FEC*, 628 F.2d 97, 98 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts before it that this standard was not met) (cited in *National Right to Work Comm. V. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)). An inference of knowing and willful conduct may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). The evidence need not show that the defendant "had specific knowledge of the regulation" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts and circumstances from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

In amended reports filed with the Commission, Sohn used Committee funds for personal expenses that, among others, included payments of cellular phone bills, electronic goods, hotels, and restaurants. Sohn also wrote checks to himself from Committee accounts in the amount of $91,884.02, cashed or deposited the checks into his personal bank account, and issued disbursements to his personal creditors, as detailed above, in violation of 2 U.S.C. §§ 439a(b). Sohn disguised his illegal activity by making

false entries into the Committee's internal database and in disclosure reports filed with the Commission, and by manipulating copies of checks and bank statements. *See supra* Part I.

Accordingly, because these expenses existed irrespective of the candidate's election campaign, Sohn converted Committee funds to personal use in violation of 2 U.S.C. § 439a(b). Consequently, the Commission finds reason to believe that Michael Sohn knowingly and willfully violated 2 U.S.C. § 439a(b).

10044274253