



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Facsimile & First Class Mail
202-654-9154

APR 26 2012

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RE: MUR 6463
Democratic National Committee
Obama Victory Committee
Organizing for America

Dear Messrs. Bauer and Wilson and Ms. Gordon:

By letter dated March 29, 2011, the Federal Election Commission ("Commission") notified your clients, the Democratic National Committee and Andrew Tobias, in his official capacity as treasurer ("DNC"); and Organizing for America, Florida ("OFA"), of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and provided copies of the complaint. By letters dated June 22 and July 29, 2011, the Commission notified you of supplemental information provided by the complainants, including allegations as to the Obama Victory Committee and Andrew Tobias, in his official capacity as treasurer ("OVF").

After reviewing the complaint, supplements and your responses, the Commission, on April 10, 2012, found reason to believe that the DNC violated 2 U.S.C. § 441b(a) by accepting corporate contributions, 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions, and 2 U.S.C. § 434(b) by not reporting the contributions, in connection with office space used by the DNC in 2009 and 2010. Regarding allegations of in-kind contributions made by Jack Antaramian in connection with an October 2008 fundraising event organized by the OVF that benefited the DNC, the Commission found reason to believe that the DNC violated 2 U.S.C. § 441a(f) by accepting the in-kind contribution, and that the OVF and the DNC violated 2 U.S.C. § 434(b) by not reporting the in-kind contribution. The Commission dismissed the allegations as to OFA and closed the file as to it. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

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Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its entire file in this matter. See 18 U.S.C. § 1519.

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In the meantime, 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. You may submit a written request for relevant information gathered by the Commission in the course of its investigation of this matter. See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Democratic National Committee and **MUR 6463**
Andrew Tobias, in his official capacity as treasurer
Organizing for America, Florida (a project of the
Democratic National Committee)
Obama Victory Fund and Andrew Tobias, in his
official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Iraj J. Zand and Raymond Sehayek, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Democratic National Committee ("DNC") and Andrew Tobias, in his official capacity as treasurer, Organizing for America, Florida (a project of the DNC) ("OFA"), and the Obama Victory Fund ("OVF") and Andrew Tobias, in his official capacity as treasurer (collectively, "Respondents").

II. FACTUAL AND LEGAL ANALYSIS

The complainants allege, in their initial complaint and in two supplemental submissions, that Respondents engaged in unlawful activities involving corporate contributions, contributions in the name of another, excessive contributions, and unreported in-kind contributions, in violation of the Act.

A. Allegations of In-Kind Contributions Made to the DNC in Connection with Pettit Square Property

The complaint makes two basic allegations in connection with the DNC's use of office space at a commercial building in Naples, Florida. The space is located in a building owned by Pettit Square Partners, LLC ("Pettit Square"), which, in turn, Pettit Square had leased to the Antaramian Development Corporation of Naples ("ADCN"). First, the complaint alleges that

1 ADCN, a for-profit Florida corporation whose president and owner is John "Jack" Joseph
2 Antaramian, allowed the DNC to occupy the office space free of charge for several months,
3 resulting in a prohibited in-kind contribution from ADCN. Second, the complaint alleges that
4 the DNC received donations of furnishings and payments for other items or services in
5 connection with the office space.

6 1. The DNC's Failure to Pay Rent

7 Pettit Square leased the office space to ADCN for a four-year period starting on July 1,
8 2009, to be used, pursuant to the terms of the lease, "for a general office and/or retail use only."
9 Ex. G of Complaint (3/22/11). ADCN was to begin paying a monthly rate of \$3,639.58 to Pettit
10 Square starting on January 1, 2010, due at the beginning of each month through the end of the
11 lease on June 30, 2013. *Id.* It appears that as an inducement to ADCN to enter into a four-year
12 lease, Pettit Square was willing to waive the usual rent charge for the first six months of the lease
13 term. The lease required ADCN to secure Pettit Square's consent prior to subleasing the
14 premises. *Id.* Pettit Square claims that ADCN, through Jack Antaramian, sublet the space to the
15 DNC without Pettit Square's knowledge or permission, from July 23, 2009 through March 3,
16 2010.

17 Although the purpose for which ADCN initially rented this office space in July of 2009 is
18 unclear, emails between DNC representatives and Jack and Mona Antaramian in May and June
19 of 2009, just prior to the start of the lease term, suggest that the DNC knew of this office space
20 and planned to use it to house staff of OFA – which the DNC refers to as "a project of the DNC."
21 Exs. N & P of Complaint (3/22/11). The DNC appears to have first occupied the space on July
22 23, 2009 and remained in it through March 3, 2010.

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1 There was no sublease or modification of the lease between ADCN and Pettit Square, and
2 the DNC did not pay any rent for the duration of its occupancy. Pettit Square filed a lawsuit
3 against ADCN and the DNC in March 2010 to evict the DNC, and to recover rent for the use of
4 the space. The DNC contends that there was confusion on the part of local staff as to who was
5 “providing the space, whether the use of the space could be accepted as an in-kind contribution
6 to the DNC, and whether it was necessary to pay or treat the use of the space as an in-kind
7 contribution given that no rent was due under the lease” until January 2010. DNC Response at 3
8 (5/17/11). The DNC asserts there was also a miscommunication between local staff and DNC
9 operations staff as to who would enter into the sublease and pay the rent. *Id.* The DNC claims
10 that it was not until the lawsuit was filed that it “became clear” that rent was due, and that it
11 “immediately investigated the matter and offered to pay the fair market value of the rent”
12 *Id.* at 3-4.

13 As part of a litigation settlement, the DNC paid \$29,117 to Pettit Square by check dated
14 October 29, 2010. Ex. M of Complaint (3/22/11). The DNC responds that it paid fair market
15 value for the use of the space.

16 Under the Act, a “contribution” includes “anything of value made by any person for the
17 purpose of influencing any election to Federal office.” 2 U.S.C. § 431(8)(A)(i). The
18 Commission’s regulations provide that “anything of value” includes all in-kind contributions,
19 including the provision of goods or services without charge or at a charge less than the usual and
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1 normal charge for such goods or services. 11 C.F.R. § 100.52(d)(1). Assuming the \$29,117
2 settlement was based on the fair market value of the rent,¹ and regardless of any
3 miscommunication or confusion over the use of the office space or who may have been the
4 beneficiary of a lease inducement, it appears that the DNC knowingly accepted that amount as an
5 in-kind contribution by conducting its operations on the premises for over seven months without
6 charge.

7 A corporation is prohibited from making contributions in connection with any election of
8 any candidate for federal office. *See* 2 U.S.C. § 441b(a). In addition, section 441b(a) prohibits
9 any officer or director of any corporation from consenting to any contribution by the corporation.
10 The information indicates that ADCN, a corporation, made a prohibited in-kind contribution to
11 the DNC by allowing the DNC to use the space free of charge. Therefore, there is reason to
12 believe the Democratic National Committee and Andrew Tobias, in his official capacity as
13 treasurer, violated 2 U.S.C. § 441b(a) by accepting the contribution.

14 In addition, all political committees are required to file reports of their receipts and
15 disbursements. 2 U.S.C. § 434(a). For unauthorized committees such as the DNC, these reports
16 must itemize all contributions that aggregate in excess of \$200 per calendar year. 2 U.S.C.
17 § 434(b)(3)(A), 11 C.F.R. § 104.3(a)(4). Any in-kind contribution must also be reported as an
18 expenditure on the same report. 11 C.F.R. §§ 104.3(b) and 104.13(a)(2). Because the DNC did
19 not report receiving the in-kind contribution, there is also reason to believe that the Democratic
20 National Committee and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C.
21 § 434(b).

¹ If the DNC had been subsumed under the terms of the lease, it would have been required, after six months, to begin paying a monthly rate of \$3,640 throughout the remainder of the four-year lease period. *See* Ex. G of Complaint. The \$29,117 settlement amount approximated the equivalent of eight months' rent at the \$3,640 rate (\$3,640 x 8 = \$29,120).

1 Finally, since OFA appears to be merely a "project" of the DNC and not a separate entity,
2 the Commission dismisses the allegations as to Organizing for America, Florida.

3 **2. Office Furnishings and Utilities**

4 The complaint alleges that the Antaramians also made in-kind contributions of "furniture,
5 fixtures, utilities, and moving services" to the DNC in connection with the office space the
6 OFA/DNC occupied from July 23, 2009 through March 3, 2010, and attaches copies of emails
7 discussing the items and various invoices. Complaint at 3, Exs. N, O. Respondents appear to
8 acknowledge that inadvertent in-kind contributions may have been made by Jack and Mona
9 Antaramian, ADCN, and Brompton Road Partners, an LLC that had been leasing a copy machine
10 used by the OFA/DNC for approximately seven weeks. A May 6, 2011 letter from the
11 Antaramians' counsel to the DNC requested reimbursement for the following payments made in
12 connection with setting up and operating the office space:

- 13 • \$487.50 paid by Jack Antaramian for professional movers to move furniture and a copy
14 machine to the office (invoice dated June 8, 2009);
15
- 16 • \$511.06 paid by Jack Antaramian for an electrician to install new electrical outlets for the
17 OFA (invoice dated June 11, 2009);
18
- 19 • \$500 rental charge covered by Brompton Road Partners, LLC for the use of the copy
20 machine by OFA/DNC from July 23 to September 7, 2009;
21
- 22 • \$135 paid by ADCN for services performed on computer systems at the OFA office
23 (invoice dated August 18, 2009); and
24
- 25 • \$888.16 paid by Mona Antaramian in 2009 and 2010 for electric bills and internet/phone
26 bills associated with the office.
27

28 The DNC asserts that some expenses "occurred and were paid for before [it] occupied the
29 space or were paid for or provided" without its "direct knowledge." DNC Response at 4
30 (5/17/11). The DNC states, however, that it has reimbursed the above expenses pursuant to the

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1 Antaramian counsel's request. *Id.* at 1. Regardless of how or when the payments were made,
2 the DNC appears to have knowingly accepted each of the items by using the office space and all
3 of its associated furnishings, equipment, and utilities. Because the costs of the items exceeded
4 the \$200 itemization threshold (the \$135 payment by ADCN exceeds the threshold when
5 combined with the value of office space it provided to the DNC), there is reason to believe that
6 the Democratic National Committee and Andrew Tobias, in his official capacity as treasurer,
7 violated 2 U.S.C. § 434(b) by not reporting these contributions.

8 Moreover, these contributions raise additional problems under the Act. Pursuant to the
9 Act's limits for the 2010 election cycle, no person was permitted to make contributions to the
10 political committees established and maintained by a national political party in a calendar year
11 that, in the aggregate, exceed \$30,400, and no political committee was permitted knowingly to
12 accept such excessive contributions. 2 U.S.C. §§ 441a(a)(1)(B) and 441a(f). Given that Jack
13 and Mona Antaramian had each reached their 2009 contribution limits to the DNC before it
14 started occupying the premises, there is reason to believe that the Democratic National
15 Committee and Andrew Tobias, in his official capacity as treasurer, accepted excessive
16 contributions in violation of 2 U.S.C. § 441a(f). In addition, regarding ADCN's payment for
17 services performed on computer systems at the OFA office, there is reason to believe that the
18 Democratic National Committee and Andrew Tobias, in his official capacity as treasurer,
19 violated 2 U.S.C. § 441b(a) by accepting a corporate contribution.

20 B. Allegations in Connection with October 2008 Fundraiser
21 Held at Naples Bay Resort
22

23 In a supplemental filing, the complainants also allege that Jack Antaramian made an in-
24 kind contribution to the OVF in connection with an October 8, 2008 fundraising event at the
25 Naples Bay Resort. Attached to the filing are invoices and other documents indicating that he

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1 may have paid a total of \$24,184.54 in event-related charges. Exs. C-J of Complaint (7/25/11).
2 The OVF is a joint fundraising committee that conducted fundraising events during the 2008
3 election cycle, disbursing its proceeds to the DNC and to Obama for America, the principal
4 campaign committee of Barack Obama. The available information indicates that \$24,184.54 in
5 catering costs, service charges, rental equipment costs and other fundraising event expenses were
6 charged to Jack Antaramian's personal account. A September 9, 2011 letter from Antaramian's
7 counsel, addressed to the DNC, requests reimbursement for the expenses. The DNC states that it
8 is "issuing payment for the expenses" identified in counsel's letter. DNC Response at 2
9 (7/29/11). According to a letter from Antaramian's counsel to the Commission dated March 30,
10 2012, Antaramian received reimbursement from the DNC on March 26, 2012 in the amount of
11 \$24,184.54.

12 The OVF and the DNC appear to have knowingly accepted an in-kind contribution from
13 Jack Antaramian by using or consuming the items without reimbursing him. See MUR 6447
14 (Steele) (candidate committee accepted in-kind contributions by not reimbursing individual who
15 paid for, *inter alia*, catering and security services at fundraiser; see Conciliation Agreement
16 dated Aug. 24, 2011). Based on a review of the 2008 disclosure reports filed by Obama for
17 America and the DNC, at the time of the event, Jack Antaramian had reached his \$2,300
18 contribution limit to the former committee, see 2 U.S.C. § 441a(a)(1)(A), and had contributed
19 \$22,700 to the DNC, leaving him with a remaining limit of \$5,800 to the DNC. See 2 U.S.C.
20 § 441a(a)(1)(B) (\$28,500 limit - \$22,700 = \$5,800). After attributing \$5,800 of Antaramian's
21 \$24,184.54 in-kind contribution in connection with the event to the DNC, it appears that he
22 exceeded his 2008 contribution limit by \$18,384.54. Accordingly, there is reason to believe the

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1 Democratic National Committee and Andrew Tobias, in his official capacity as treasurer,
2 violated 2 U.S.C. § 441a(f) by knowingly accepting the contribution.

3 Both the OVF and the DNC were required to report Antaramian's in-kind contribution.
4 See 2 U.S.C. § 434(b) and 11 C.F.R. § 102.17(c)(8) (fundraising representative shall report all
5 funds received in the reporting period in which they are received; each participating political
6 committee shall itemize its share of gross receipts as contributions from original contributors to
7 the extent required under 11 C.F.R. § 104.3(a)). ~~Because~~ the OVF and the DNC did not report
8 the in-kind contribution, there is reason to believe that the Obama Victory Fund and Andrew
9 Tobias, in his official capacity as treasurer, and the Democratic National Committee and Andrew
10 Tobias, in his official capacity as treasurer, each violated 2 U.S.C. § 434(b).

11 C. **Alleged Contributions Made From Foreign or Other Sources**
12

13 The complainants, who are British citizens and therefore foreign nationals under the Act,
14 see 2 U.S.C. § 441e(b), allege that Jack Antaramian may have used funds from foreign or other
15 unlawful sources to make political contributions. They describe a series of wire transactions
16 occurring from September 2001 through January 2004 that resulted in a transfer of \$1 million for
17 an "investments entry fee" from their personal accounts to the Antaramian Family Trust, in order
18 to "participate with Jack in real estate development projects in Naples, Florida." Complaint at 3
19 (3/22/11). The complaint asserts that, ~~because Jack Antaramian's assets are tied to the~~
20 Antaramian Family Trust, "it is likely that Jack has been utilizing the . . . Trust, along with other
21 offshore funds in which Jack may have laundered money, to make his political contributions."
22 *Id.*

23 In a supplemental filing, complainants allege that they have "recently uncovered further
24 information on the potential source of funds" used by Jack Antaramian to make contributions in

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1 2009. Complaint supplement at 1 (6/16/11). The first alleged source consists of proceeds from
2 the sale of a London residence that was purchased with funds allegedly provided to the
3 Antaramian Family Trust. Jack Antaramian allegedly transferred the funds to his U.S. bank
4 account in early March 2009, after which time he made \$30,400 in contributions to the DNC.
5 The second alleged source of funds was derived from proceeds of a "mortgage fraud possibly
6 perpetrated" by Jack Antaramian in connection with a Florida real estate project. *Id.* at 1-2.

7 The DNC responds that, when it received contributions from Antaramian, "none of the
8 factors set out at 11 C.F.R. § 110.20(a)(5), which could indicate a contribution from a foreign
9 national, were present."² DNC Response at 2-3 (5/17/11). As to other sources of funds that
10 Antaramian allegedly used to make contributions, the DNC contends that the complaint does not
11 assert that the DNC violated the Act, and that the Commission does not have any jurisdiction
12 over violations of other laws or civil claims not implicating the Act. DNC Response at 1-2
13 (7/13/11).

14 Foreign nationals are prohibited from making, directly or indirectly, a contribution or
15 donation to a committee of a political party. See 2 U.S.C. § 441e(a)(1)(B). Further, no person
16 shall knowingly provide "substantial assistance" in the making of such a contribution or
17 donation, and no foreign national shall direct, dictate, control, or directly or indirectly participate
18 in the decisionmaking process of any person making such a contribution or donation. 11 C.F.R.
19 § 110.20(h) and (i).

20 It is highly speculative for the complainants to assert that investment funds they wired to
21 Jack Antaramian from 2001 to 2004 (whether received by him or by a trust controlled by him)

² Under 11 C.F.R. § 110.20(a)(5), facts relevant to the issue of whether such a contribution was "knowingly" received include whether (i) the contributor or donor uses a foreign passport or passport number for identification purposes; (ii) the contributor or donor provides a foreign address; (iii) the contributor or donor makes a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank; or (iv) the contributor or donor resides abroad.

1 were used years later to make political contributions. More fundamentally, even if some or all of
2 the investment funds at issue remained in an account used by Jack Antaramian to make
3 contributions, there are no facts in the complaint suggesting that the funds comprising the
4 contributions were not his own or under his control. The complainants do not allege, for
5 example, that they directed Jack Antaramian to use their funds to make specific contributions
6 and that he did so, or that they were otherwise involved in Antaramian's decisionmaking process
7 when he made his contributions. See 11 C.F.R. § 110.20(i). Similarly, the complaint does not
8 include any facts suggesting that other sources of funds were not controlled by Antaramian, such
9 as the proceeds from the sale of a London residence; further, allegations that funds were derived
10 from a mortgage fraud "possibly perpetrated" by him – even if there were such a fraud – would
11 be outside of the Act's purview.

12 The Commission has stated that "unwarranted legal conclusions from asserted facts or
13 mere-speculation will not be accepted as true" and "purely speculative charges, especially when
14 accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a
15 violation of the FECA has occurred." See Statement of Reasons, MUR 4960 (Hillary Rodham
16 Clinton for Senate Exploratory Committee, issued December 21, 2000) (citations omitted).

17 Here, there are no facts supporting the assertion that the funds at issue were not under
18 Jack Antaramian's control or that the complainants made specific contributions or donations
19 through him. The allegations rest on sheer speculation that has been directly refuted, thus
20 providing an insufficient basis for an investigation.

21 Accordingly, there is no reason to believe that the Democratic National Committee and
22 Andrew Tobias, in his official capacity as treasurer, violated the Act by receiving funds from
23 foreign or other sources.

**D. Alleged Contributions Made by Jack Antaramian
in the Names of Family Members**

The complaint alleges that, “[i]n light of the in-kind contributions Jack made to the DNC at Pettit Square, a review of the FEC Individual Contribution Lists also raises concerns that other contributions made by Mona [Antaramian], David [Antaramian], and Yasmeen [Wilson] were actually funded by Jack.” Complaint at 4 (3/22/11). The complaint appears to suggest that, based on David Antaramian’s and Yasmeen Wilson’s family ties to Jack Antaramian and questions about their income, the funds comprising their contributions to the DNC during the 2008 and 2010 election cycles may have come from Jack Antaramian or another source. *Id.*

The DNC asserts that it has no knowledge that any contributions it received were made in the name of another. DNC Response at 1-2 (7/13/11).

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f. Any candidate or political committee who knowingly accepts or receives any contribution prohibited by 2 U.S.C. § 441f also violates the Act. *Id.* The allegation that Jack Antaramian made contributions in the names of family members appears to be based on mere speculation. The complainants’ attempt to draw inferences based on the contributors’ family ties and their level of income is far too attenuated to support a finding of reason to believe there is a violation of the Act. *See* MUR 5538 (Friends of Gabbard) (Commission found no reason to believe that the respondents violated 2 U.S.C. § 441f; General Counsel’s Report adopted by Commission stated that allegations that persons of certain occupations “must not have the means to make contributions, even relatively large ones, are themselves entirely speculative; to leap from those conclusions to conclusions that those persons’ contributions must have been reimbursed is to pile speculation upon speculation”). *See also* Statement of Reasons, MUR 4960.

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- 1 Accordingly, there is no reason to believe that the Democratic National Committee and
- 2 Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. § 441f.

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