

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
MUR 6626) DISMISSAL AND
Mittman for Congress) CASE CLOSURE UNDER THE
and Tess Mittman as treasurer) ENFORCEMENT PRIORITY
) SYSTEM
)
MURs 6629 and 6636)
Mittman for Congress)
and Tess Mittman as treasurer)
Robert Mittman)

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GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MURs 6626, 6629, and 6636 as low-rated matters and has determined that they should not be referred to the Alternative Dispute Resolution Office.¹

Respondent Mittman was a first-time candidate for Congress from New York's Sixth congressional district who was defeated in the June 26, 2012 primary election. Respondents

¹ MUR 6626 EPS rating: 6, 2012. MUR 6629 EPS rating: 20, 2012. MUR 6636 EPS rating: 2, 2012.

Complaint Filed: August 10, 2012. Response Filed: September 6, 2012. MUR 6629 EPS rating: 20, 2012. MUR 6636 EPS rating: 2, 2012. Complaint Filed: August 20, 2012. Response Filed: September 4, 2012. Complaint Filed: September 4, 2012. Response Filed: October 2, 2012.

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1 Mittman for Congress and Tess Mittman in her official capacity as treasurer (collectively the
2 “Committee” or “MFC”) is Mittman’s principal campaign committee. MURs 6626, 6629 and
3 6636 involve Complaints by vendors (“vendors” or “Complainants”) who claim that MFC failed
4 to reimburse them for services rendered, and that the amounts allegedly owed were not disclosed
5 as disputed debts on MFC’s disclosure reports.²

6 The Respondents assert that the Complaints arise from the actions of an unnamed
7 Mittman campaign consultant, whom Respondents contend hired the vendors to do work that
8 allegedly turned out to be unauthorized, substandard, or overpriced. Resp. at 1-2, MUR 6626;
9 Resp. at 1, MUR 6629; Resp. at 1-2, MUR 6636. Respondents deny having a contractual
10 obligation with the vendors. Resp. at 1, MUR 6626; Resp. at 1, MUR 6629; Resp. at 1, MUR
11 6636. Respondents assert that the consultant “put up various persons to make sham complaints”
12 about the alleged debts, rather than respond to Respondents’ requests for information regarding
13 the disputed claims. Resp. at 2, MUR 6636. Respondents also claim that “upon information and
14 belief” documents submitted by one Complainant were in fact prepared by the consultant, *id.*,
15 and that some of the debt claims are fabrications. Resp. at 1, MUR 6629. Respondents contend
16 that in some instances, MFC made and reported expenditures to some of the vendors, despite
17 concerns about the amounts claimed and the work allegedly performed. Resp. at 1, MUR 6626;
18 Resp. at 1, MUR 6629; Resp. at 1, MUR 6636.

² In its most recent disclosure report, MFC disclosed receipts, disbursements, and cash on hand of \$0, as well as debts of \$202,535.66. See MFC 2014 April Quarterly Report at 2 (filed on April 11, 2014). After filing its 2012 October Quarterly Report, which covered the time period from July 1, 2012 through September 30, 2012, MFC has disclosed negligible receipts and disbursements, and no more than \$722.22 cash on hand since October 1, 2012. See, e.g., MFC 2012 Amended Year End Report at 2 (filed on March 19, 2013).

1 For the reasons set forth below, the Office of General Counsel recommends that the
2 Commission dismiss the allegations that Respondents violated the Act or Commission
3 regulations in MURs 6626, 6629 and 6636.

4 I. MUR 6626

5 In MUR 6626, the Complainant alleges that his company, Sterling Marketing Group, Inc.
6 ("SMG"), produced and mailed campaign mailers for the Mittman campaign, for which SMG is
7 owed a total of \$46,000. Compl. at 1-3. The Complaint contends MFC did not disclose any
8 disputed debt with SMG in reports that MFC filed with the Commission. *Id.* According to the
9 Complaint, MFC requested SMG's services starting in June 2012 and paid SMG's invoices for
10 the first two mailers it produced. *Id.* at 1-2, Ex. 1 (two alleged SMG invoices, addressed to MFC
11 and dated June 12, 2012 in the amount of \$13,450, and June 14, 2012 in the amount of \$10,500,
12 respectively, are stamped "paid"). However, MFC allegedly did not pay SMG's additional
13 invoices totaling \$31,500 that SMG provided to MFC on June 14, 2012. Compl. at 2.³ The
14 Complaint alleges that the Committee acknowledged this debt by providing SMG with a \$31,500
15 check dated June 23, 2012, signed by Committee treasurer Tess Mittman, but asserts that the
16 check was returned twice for insufficient funds. *Id.*, Ex. 3 (the returned check).⁴ SMG alleges
17 that it also invoiced the Committee on June 14, 2012, for \$7,500 and on June 20, 2012 for an
18 additional \$7,000 for other mailer-related services that MFC did not pay or disclose. *Id.* at 3-4.

19 Respondents contend that they never engaged SMG directly or had a contract with the
20 vendor. Resp. at 1. Instead, Respondents assert that an unnamed MFC consultant stated that he

³ The MUR 6626 exhibits include copies of invoices, campaign mailers, a check from the Committee, and letters addressed to Mittman and the Committee attempting to collect payment.

⁴ The check's memo section refers to "147; 149; 150," which corresponds to three invoices bearing those numbers attached to the Complaint as Ex. 1 for which SMG invoiced MFC a total of \$31,500.

1 would competitively “price out” work that Respondents requested, and that they were to only
2 pay the raw costs of the vendors and nothing further for the consultant (“the party who was
3 hiring such vendors”). *Id.* Respondents quote what appears to be an excerpt of a short written
4 description of the consultant’s scope of work, though they do not identify or provide the source
5 document for these excerpts. *Id.* at 1-2. The Response also indicates that the consultant did not
6 comply with MFC requests for a signed copy of the written agreement between SMG and MFC.
7 *Id.* at 2.

8 Respondents nonetheless acknowledge that “from time to time” the consultant requested
9 MFC to issue checks paid directly to SMG (“a ‘third-party’ printer”), and that MFC paid
10 “[s]everal invoices . . . upon presentation” despite alleged overcharges. Resp. at 1.⁵ As to the
11 alleged undisclosed debts described in the Complaint, Respondents contend that “only days”
12 before the June 26, 2012 primary election, the consultant verbally requested \$31,500 for SMG.
13 *Id.* According to Respondents, they prepared an unsigned check “with the understanding that it
14 would not be delivered until the actual invoices were provided and reviewed and the appropriate
15 adjustments were made on the previously overcharged invoices.” *Id.* The Respondents do not
16 contest the authenticity of the June 23, 2012 MFC check to SMG for \$31,500 that was attached
17 to the Complaint,⁶ but contend that SMG’s written invoices supporting the requested payment
18 were not received until July 2012. (Though not clear on the face of the Response, these invoices
19 presumably addressed the entire \$46,000 in disputed debts and not just the \$31,500 debt, as the
20 Committee later reported \$46,000 as a disputed debt, *see infra*.) Respondents assert that the

⁵ The Committee disclosed five payments to SMG totaling \$37,825, including the two payments of \$13,450 and \$10,500, respectively, which are described in the Complaint. *See* MFC 2012 12-Day Pre-Primary Report at 8 (filed on June 14, 2012); MFC 2012 Amended July Quarterly Report at 14-15 (filed on March 19, 2013).

⁶ Respondents do not address Complainant’s claim that Committee treasurer Tess Mittman signed the check or the fact that the Complaint included what appears to be a signed photocopy of the check.

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1 invoices reflected prices that were double the going market rate, contained errors, and included
2 charges that were the responsibility of the consultant. *Id.*⁷

3 **II. MUR 6629**

4 In MUR 6629, the Complaint alleges that in early June 2012, Mittman asked Augusto
5 "Gus" Sevilla of iMedia 225 ("iMedia"), to create two videos for Mittman's campaign. Compl.
6 at 1. Allegedly, iMedia created videos entitled "Dr. Mittman for Congress" and "Politics as
7 Usual – Queens & America in Crisis" that were uploaded to MFC's website and YouTube, used
8 in MFC press releases and an "internet campaign," and were reported by "Major Media,"
9 including a "NY Daily News" blog and Politicker.com. *Id.* The Complaint did not include any
10 documents establishing the earliest date that iMedia may have contracted with MFC.

11 The Complaint alleges that between June 25 and August 5, 2012, invoices for \$9,994 for
12 the two videos were repeatedly sent to Mittman by mail, email, fax, and certified mail. Compl.
13 at 2.⁸ The Complaint's attachments include the videos, invoices, and correspondence, including
14 an alleged email from MFC informing Sevilla on July 12, 2012 that Sevilla's email containing
15 invoices had been forwarded to "Kelli" Weiss, the director of the campaign office, and "Susan"

⁷ Respondents assert that they asked the consultant to allow them to speak to SMG, but were told "'they don't want to talk to you.'" Resp. at 2. Additionally, Respondents discovered that the telephone number on SMG's stationary was a nonworking number. *Id.* Campaign staff attempted to visit SMG's office at the addresses listed on the invoices and found that "no one was at that address." *Id.* Respondents also state that the sender's information on the mailing receipts enclosed as Exhibit 5 to the MUR 6626 Complaint "have the sender's information oddly redacted." *Id.* Consequently, Respondents contend that SMG "is actually the consultant," and that they had been taken advantage of and do not owe *bona fide* debt to SMG. *Id.*

We note that the sender's information on the original copies of the mail receipts filed with the Complaint can be read through the attempted redaction of the sender's identity. Compl., Ex. 5. The redacted information identifies the business whose mail permit was used, the business that served as its mailing agent, the individual who signed the form, and a phone number. *Id.* This information does not identify any of those persons as SMG or Sergio Torres, who filed the Complaint on behalf of SMG, and neither the address nor phone numbers match those of SMG. Compare *id.* with Compl., Ex. 4.

⁸ The Complaint uses the figure "\$9,944" but the attached invoices and the MUR 6629 Response (*infra*) use the figure "\$9,994," so the latter amount appears to be correct.

1 Mittman, who also worked for the campaign. *Id.*, Attach. Allegedly, Respondents did not pay
2 the invoices or disclose the amount owed as disputed debt in their reports to the Commission. *Id.*
3 at 1.

4 According to Respondents, they "never requested services directly from iMedia" and did
5 not enter into a "verbal or written contract with iMedia or Augustus Sevilla for \$9,994 for video
6 production." Resp. at 1. Rather, Respondents assert that the consultant represented that a
7 "computer guy" would handle all website-related functions — "which would include multiple
8 videos on the [web] site" — and that Respondents and the consultant agreed to "a complete flat
9 fee" of \$2,400. *Id.* Respondents acknowledge receiving direct requests for payment from
10 Sevilla starting in early July, which Respondents describe as Sevilla's "self-serving letters
11 'corroborating' himself by stating that he had sent requests for payment." *Id.*

12 Respondents acknowledge that MFC paid \$4,000 for Sevilla's work at the consultant's
13 request, which included an additional \$1,600 for email services. Resp. at 1. (The Committee
14 disclosed this payment as a disbursement directly to Sevilla. See MFC 2012 July Quarterly
15 Report at 13.) Respondents contend that the Complaint's allegation that they owe Sevilla an
16 additional \$9,994, and Sevilla's "self-serving letters 'corroborating' himself," are a "complete
17 fabrication." *Id.* Consequently, Respondents contend that they do not have an obligation to pay
18 the alleged debt and did not receive notice of any such obligation until July 2012, after the close
19 of the period covered by the 2012 July Quarterly Report. *Id.*

20 **III. MUR 6636**

21 In MUR 6636, the Complaint alleges that the Committee failed to disclose a debt of \$300
22 to Elliot Arroyo for driving the campaign's recreational vehicle ("RV"), used by MFC as a
23 mobile campaign office and for joining Mittman "in leafleting train stations." Compl. at 1-2.

1 According to the Complaint, Mittman requested Arroyo's services and Mittman gave his
2 "personal assurances" that Arroyo would be paid. *Id.* Further, Arroyo states that the Committee
3 failed to disclose an expenditure of \$3,800 made by Mittman using a "non campaign" credit
4 card, to rent the RV. *Id.* The Complaint includes attached photos of the RV and campaign signs
5 but no contracts or invoices establishing MFC's obligation to pay Arroyo or any notice of the
6 disputed debt. *Id.*, Attach. The Complaint alleges that Arroyo personally visited Mittman's
7 office to press his claim on July 3, 2012. *Id.*

8 Respondents assert that the consultant, not MFC or Mittman, hired Arroyo and that
9 Mittman met Arroyo only once. Resp. at 1. Nevertheless, Respondents acknowledge that they
10 gave the consultant a check dated June 23, 2012, that was made out to Arroyo for "the full
11 amount requested [by the consultant] which was represented to be [Arroyo's] payment in full for
12 all work performed on behalf of the campaign." *Id.* Respondents contend that June 23, 2012
13 was Arroyo's final day of work for the campaign and note that MFC timely disclosed this final
14 payment for all of Arroyo's services. *Id.*, see also MFC's 2012 July Quarterly Report at 10
15 (\$450 paid on June 23, 2012 to Arroyo, describing the purpose of the disbursement as "driver").

16 Respondents deny that Arroyo provided any additional services after June 23, 2012, for
17 which MFC owes him a debt. Resp. at 1. As proof, Respondents contend that, in response to an
18 unrelated allegation that the MFC RV "knocked into the bumper of another vehicle on Sunday,
19 June 24, 2012[,] Mr. Arroyo stated that [the accident] never occurred as he was no longer driving
20 the vehicle." *Id.* Respondents assert that neither Arroyo nor the consultant have provided
21 invoices to document the additional sums claimed by Arroyo. *Id.*

22 As for Arroyo's allegation that the Committee failed to timely report Mittman's alleged
23 MFC's RV rental expenditure, Respondents state that the consultant rented and "personally

1 returned the vehicle following the election." Resp. at 1. The consultant allegedly refused to
2 provide the Committee with the rental contract and other paperwork, and there "were no RV
3 charges available or payments made prior to July." *Id.* at 1-2. Accordingly, MFC contends that
4 it timely reported its payments for the RV in its 2012 October Quarterly Report. *Id.*; *see also*
5 MFC 2012 October Quarterly Report at 8 (payment of \$3,302.81 to "American Express" for
6 "RV").

7 **IV. DISCUSSION**

8 The Complaints allege that MFC failed to disclose its debts to vendors and, in MUR
9 6636, that MFC also failed to disclose a disbursement for the rental of the MFC RV. The Act
10 and Commission regulations require political committees to continuously report the amount and
11 nature of their outstanding debts until those debts are extinguished. 2 U.S.C. § 434(b)(8);
12 11 C.F.R. §§ 104.3(d), 104.11(a)-(b). This reporting requirement applies both to "estimated
13 debts," *see* 11 C.F.R. § 104.11(b), and "disputed debts," *see* 11 C.F.R. § 116.10(a). Debts or
14 obligations of \$500 or less "shall be reported as of the time payment is made or not later than 60
15 days after such obligation is incurred, whichever comes first." 11 C.F.R. § 104.11(b). Debts or
16 obligations over \$500 shall be disclosed "as of the date on which the debt or obligation is
17 incurred," with the exception of recurring administrative expenses such as salary or rent, and if
18 the exact amount is not known, the report shall state that the amount disclosed is an estimate. *Id.*
19 "Once the exact amount is determined, the political committee shall amend the report(s)
20 containing the estimate or indicate the correct amount on the report for the reporting period in
21 which such amount is determined." *Id.*

22 Where there is a "disputed debt," the political committee must report the disputed debt if
23 the creditor has provided "something of value" to the political committee. 11 C.F.R.

1 § 116.10(a). A "disputed debt" is "an actual or potential debt or obligation owed by a political
2 committee, including an obligation arising from a written contract, promise or agreement to
3 make an expenditure, where there is a bona fide disagreement between the creditor and the
4 political committee as to the existence or amount of the obligation owed by the political
5 committee." 11 C.F.R. § 116.1(d). Until the dispute is resolved, the political committee must
6 disclose any amounts paid to the creditor, any amount the political committee admits it owes,
7 and the amount the creditor claims is owed. 11 C.F.R. § 116.10(a).

8 After the Complaints and Responses in these matters were filed, the Committee
9 disclosed several disputed debts on Schedule D of its 2012 October Quarterly Report, including:
10 (1) a disputed \$46,000 debt to SMG, the alleged debt in MUR 6626; (2) a disputed debt of
11 \$9,994 to Sevilla, the alleged debt in MUR 6629; and (3) a disputed debt of \$300 to Arroyo, the
12 alleged debt in MUR 6636. See MFC 2012 October Quarterly Report at 17-18 (filed on
13 October 15, 2012). The Committee also disclosed a payment of \$3,302.81 for the RV on its
14 October Quarterly Report (see MUR 6636 Complaint and Response, *supra*).

15 The Committee should have reported certain debts as estimated debts or disputed debts
16 during the reporting period in which they were incurred. For example, the RV was apparently
17 used by the campaign during the primary election campaign, but the rental costs of \$3,302.81
18 were not disclosed until the Committee filed its 2012 October Quarterly Report. In addition,
19 Respondents appear to concede that SMG may be owed payments in addition to those already
20 made, see n. 6, given that a \$31,500 check for SMG was prepared and dated June 23, 2012.
21 However, the SMG claims were not disclosed as estimated or disputed debts until after the June
22 26, 2012 primary election.⁹

⁹ The record is insufficient to determine the scope of the necessary amendments.

1 The Committee did disclose the claims underlying MURs 6626, 6629 and 6636 on its
2 2012 October Quarterly Report and has continued to disclose them on its subsequent financial
3 disclosure reports. Also, according to the Respondents, they made numerous attempts to seek
4 information from the consultant in order to comply with the reporting provisions of the Act and
5 Commission regulations and to determine the validity of the claims.

6 Therefore, in furtherance of the Commission's priorities relative to other matters
7 pending on the Enforcement docket, the Office of General Counsel believes that the
8 Commission should exercise its prosecutorial discretion and dismiss these matters pursuant to
9 *Heckler v. Chaney*, 470 U.S. 821 (1985). The Office of General Counsel also believes that the
10 Commission should remind the Committee that it must continuously report the amount and
11 nature of its outstanding debts until those debts are extinguished, pursuant to 2 U.S.C.
12 § 434(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11, including both "estimated debts," *see* 11 C.F.R.
13 § 104.11(b), and "disputed debts," *see* 11 C.F.R. § 116.10(a), and to amend its 2012 Pre-
14 Primary and July Quarterly Reports as appropriate. Finally, the Office of General Counsel
15 recommends that the Commission approve the attached Factual and Legal Analysis and the
16 appropriate letters, and close the files in each of these matters.


V. RECOMMENDATIONS

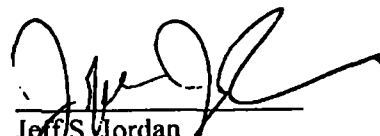
1. Dismiss MURs 6626, 6629 and 6636 pursuant to the Commission's prosecutorial discretion;
2. Remind the Committee to continuously report the amount and nature of its outstanding debts until those debts are extinguished, pursuant to 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11, including both "estimated debts," *see* 11 C.F.R. § 104.11(b), and "disputed debts," *see* 11 C.F.R. § 116.10(a), and to amend its 2012 Pre-Primary and July Quarterly Reports as appropriate;
3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
4. Close the files.


General Counsel

5/28/14
Date

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