

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR: 7571**

DATE COMPLAINT FILED: Feb. 25, 2019

DATE OF LAST NOTIFICATION: Feb. 27, 2019

DATE OF LAST RESPONSE: Mar. 19, 2019

DATE ACTIVATED: Oct. 18, 2019

ELECTION CYCLES: 2018, 2020

EXPIRATION OF SOL: Nov. 26, 2023

COMPLAINANT:

Shaunna Thomas

RESPONDENT:Donald J. Trump for President, Inc., and Bradley T.
Crate in his official capacity as treasurer
Donald J. Trump**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30114(a), (b)

11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Donald J. Trump and his principal campaign committee, Donald J. Trump for President, Inc., and Bradley T. Crate, in his official capacity as treasurer (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using campaign funds to pay a law firm to represent Trump in a civil defamation action that the Complaint alleges raises a question of improper personal use. The Response states that the payment was not made for the defamation matter identified in the Complaint, but rather was made on behalf of the Committee for legal services regarding an unrelated employment matter. Based on the available information, we recommend that the Commission dismiss this matter and close the file.

1 **II. FACTUAL BACKGROUND**

2 Donald J. Trump is the president of the United States and is a candidate for re-election in
3 2020. The Committee is the principal campaign committee for Donald Trump's 2016 and 2020
4 presidential campaigns.¹

5 The Complaint alleges that Marc Kasowitz of Kasowitz Benson is a lawyer who has
6 represented Trump, in a personal capacity, for more than 15 years.² Summer Zervos was a
7 contestant on the television show "The Apprentice" in 2005, who filed a defamation lawsuit
8 against Trump in his personal capacity on January 17, 2017.³ The available information shows
9 that Marc Kasowitz represents Trump in that lawsuit.⁴ Commission filings by the Committee
10 report that it paid Kasowitz Benson \$322,614.29 on November 26, 2018, for "legal consulting."⁵

11 The Complaint alleges that, based on the timing of the payments to the Kasowitz Benson
12 firm and the firm's representation of Trump in the Zervos defamation suit, the "only reasonable
13 conclusion" is that the payment by the Committee was for that representation, and thus the
14 Committee violated the Act by paying Kasowitz Benson for representation that Marc Kasowitz
15 provided to Trump in the Zervos lawsuit.⁶ The Complaint further asserts that various other law

¹ *See* Amended Statement of Organization, Donald J. Trump for President (Jan. 20, 2017).

² MUR 7571, Compl. at 3.

³ *See Zervos v. Trump*, 59 Misc. 3d 790, 794 (N.Y. Sup. Ct. 2018), *aff'd*, 171 A.D.3d 110 (N.Y. App. Div. 2019); Compl. at 2-3.

⁴ *See Zervos*, 59 Misc. 3d at 790; Compl. at 2.

⁵ Amended 2019 Year-End Report at 5,501, Donald J. Trump for President (Mar. 13, 2019). The Committee also paid Kasowitz Benson \$69,316.50 on July 31, 2016. Amended August 2016 Quarterly Report at 98,808, Donald J. Trump for President (Nov. 19, 2018). According to the Committee's filings, these are the only payments it has made to Kasowitz Benson.

⁶ Compl. at 2-3, 6.

1 firms have provided services to the Committee in other matters involving the Committee's
2 interests, but that Kazowitz Benson does "not appear" to have been one of these firms.⁷ Other
3 than these circumstantial arguments, however, the Complaint does not otherwise provide
4 information supporting its conclusion that the payment from the Committee to Kazowitz Benson
5 was made to compensate the firm for its work on the Zervos lawsuit.

6 The single-page Response from the Committee denies that the payment from the
7 Committee was for Kazowitz Benson's representation in the Zervos lawsuit, and states that the
8 payment was for "legal costs incurred by the Campaign in connection with an employment
9 matter and certain legal research done on the Campaign's behalf — and had nothing to do with
10 the lawsuit speculatively described in the Complaint."⁸ Neither the Response nor publically
11 available information we were able to locate provide further information or corroboration
12 regarding the nature of this employment matter.

13 III. ANALYSIS

14 Under the Act, a contribution accepted by a candidate may be used for, *inter alia*,
15 "otherwise authorized expenditures in connection with the campaign for Federal office of the
16 candidate."⁹ However, a contribution to a candidate shall not be converted by any person to

⁷ *Id.* at 3.

⁸ MUR 7571, Resp. at 1 (Mar. 8, 2019).

⁹ 52 U.S.C. § 30114(a).

1 “personal use.”¹⁰ “Personal use” means any use of funds in a campaign account of a present or
2 former candidate to fulfill a commitment, obligation, or expense of any person that would exist
3 irrespective of the candidate’s campaign or duties as a Federal officeholder.¹¹

4 The Complaint does not provide a compelling basis upon which to believe that the
5 Committee’s payment was made in connection with the Zervos defamation lawsuit. The
6 Complaint’s theory finds some support by relying on Marc Kasowitz’s representation of Trump
7 in that lawsuit, the timing of the subject payment and the representation, and the assertion that
8 Kasowitz Benson does “not appear” to have provided legal counsel to the Committee.¹² But
9 these factual points, even if true, do not appear to take into account the possibility that the
10 Committee paid Kasowitz Benson for its services in connection with another matter. That
11 scenario is precisely what the Response asserts, denying that the payment was for the Zervos
12 lawsuit, and stating the payment instead was for services regarding a separate employment
13 matter and legal research that related to the Trump campaign.¹³ Although the Response is
14 unaccompanied by a sworn statement or other evidence supporting the asserted employment
15 matter work, and we did not locate publicly available information corroborating that assertion,

¹⁰ *Id.* § 30114(b)(1).

¹¹ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Explanation and Justification for Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863 (Feb. 9, 1995).

¹² Compl. at 3.

¹³ Resp. at 1.

1 Complaint's allegation is unpersuasive in urging the Commission to investigate its "[w]here
2 there is smoke, there is fire" theory.¹⁴

3 Accordingly, the available information does not support a reasonable inference that the
4 subject payment would have existed irrespective of Trump's campaign. We thus recommend
5 that the Commission dismiss this matter and close the file.

6 **IV. RECOMMENDATIONS**

- 7 1. Dismiss the allegation that Donald J. Trump for President, Inc., and Bradley T. Crate
8 in his official capacity as treasurer violated 52 U.S.C. § 30114;
9
10 2. Approve the attached Factual and Legal Analysis;
11
12 3. Approve the appropriate letters; and
13

14 ¹⁴ Compl. at 4.

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4. Close the file.

Lisa J. Stevenson
Acting General Counsel

January 16, 2020

Date

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