



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 19 2014

Kenneth F. Boehm
National Legal and Policy Center
107 Park Washington Court
Falls Church, VA 22046

RE: MUR 6275

Dear Mr. Boehm:

This is in reference to the complaint you filed with the Federal Election Commission (the "Commission") on April 19, 2010, concerning Eric Massa and Massa for Congress. Based on that complaint, on December 17, 2010, the Commission found that there was reason to believe that Massa for Congress and Beverly Massa in her official capacity as treasurer (the "Committee"), violated 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended, by failing to report debts and obligations in connection with the \$40,000 payment to Joseph Racalto and instituted an investigation of this matter. On the same date, the Commission was equally divided on whether to find reason to believe that the Committee and Eric Massa violated 2 U.S.C. § 439a(b) in connection with the Committee's \$31,896.42 payment to GMAC.

After considering the circumstances of this matter, the Commission has determined to take no further action as to the Committee concerning the alleged violation of 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 434(b)), dismissed the allegations that the Committee, Eric Massa, or Joseph Racalto violated 52 U.S.C. § 30114(b) (formerly 439a(b)), and closed the file in this matter on December 8, 2014. The Factual and Legal Analyses, which more fully explain the basis for the Commission's decision, is enclosed. One or more Statements of Reasons further explaining the basis for the Commission's earlier decision concerning the payment to GMAC will follow.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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FEDERAL ELECTION COMMISSION

RESPONDENTS: Joseph Racalto

MUR 6275

FACTUAL AND LEGAL ANALYSIS

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").¹ The Complaint alleges that Joseph Racalto, former Congressman Eric Massa's Congressional Chief of Staff, violated the Act in connection with a \$40,000 payment from Massa's campaign committee, Massa for Congress (the "Committee") to Racalto on March 4, 2010 for a "campaign management fee." The Complaint also asserted that Racalto either may not have performed sufficient work to justify the amount of the payment or had "obtained [the payment] through deceit," in which case Racalto may have converted campaign funds to personal use in violation of 52 U.S.C. § 30114 (formerly 2 U.S.C. § 439a).²

The evidence obtained by the Commission indicates that Racalto conducted work on behalf of the Committee related to campaign activities for which he was entitled to some compensation, and the parties agree as to that much.³ Whether the value of that work to the Committee reasonably supports the \$40,000 amount of the payment, however, is sharply disputed and not readily ascertainable from the available evidence. There was no written deferred compensation plan between Racalto and the Committee for his campaign work. And whether an oral agreement existed is a point of conflict among the parties, although the evidence

¹ See 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

² Compl. at 7.

³ The amount the Committee should pay to Racalto is currently the subject of a pending civil suit between the parties. See *Massa for Congress v. Joseph Racalto*, No. 11-1690CV (N.Y. Sup. Ct. Mar. 4, 2011) (complaint originally filed in Monroe County on Mar. 4, 2011, but venue changed to Steuben County on Nov. 28, 2011).

1 reflects that they discussed at least the possibility of compensation shortly before Rcalto sought
2 payment.

3 The Complaint asserted that the Committee's \$40,000 payment to Rcalto constituted
4 impermissible personal use of campaign funds — either because it was excessive or obtained
5 through false pretenses. Committees and candidates have latitude to retain services and
6 compensate staff within commercially reasonable bounds, and the available evidence suggests
7 that at least some portion of the payment was legitimate compensation for Rcalto's work on the
8 campaign. Additional Commission action relating to the value of Rcalto's services would be
9 wasteful and unwarranted, however, particularly because this issue is currently being litigated by
10 the parties. Accordingly, the Commission dismisses the allegation that Joseph Rcalto violated
11 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)), and closes the file.⁴

⁴ See *Heckler v. Cheney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (recognizing that dismissal may be warranted due to factors such as the "vagueness or weakness of the evidence").

1 **FEDERAL ELECTION COMMISSION**

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3 **RESPONDENTS:** Eric Massa **MUR 6275**
4 Massa for Congress and
5 Beverly Massa, in her official capacity as treasurer
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7 **FACTUAL AND LEGAL ANALYSIS**

8 This matter was generated by a Complaint filed with the Federal Election Commission
9 (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as
10 amended (the "Act").¹ The Complaint alleges that former Congressman Eric Massa and his
11 campaign committee, Massa for Congress (the "Committee"), violated the Act in connection
12 with a \$40,000 payment from the Committee to Joseph Racalto, Massa's Congressional Chief of
13 Staff, on March 4, 2010, for a "campaign management fee." Because that payment may have
14 related to an unreported deferred compensation arrangement, the Commission found reason to
15 believe that the Committee violated 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434(b)) by failing to
16 report debts and obligations.² The Complaint also asserted that Racalto either may not have
17 performed sufficient work to justify the amount of the payment or had "obtained [the payment]
18 through deceit," in which case the Committee or Massa may have converted campaign funds to
19 personal use in violation of 52 U.S.C. § 30114 (formerly 2 U.S.C. § 439a).³

20 **A. Reporting Debt or Obligation**

21 The evidence obtained by the Commission indicates that Racalto conducted work on

¹ See 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

² See Certification, MUR 6275 (Dec. 28, 2010); Factual & Legal Analysis, MUR 6275 (Massa for Congress).

³ Compl. at 7.

1 behalf of the Committee related to campaign activities for which he was entitled to some
2 compensation, and the parties agree as to that much.⁴ Whether the value of that work to the
3 Committee reasonably supports the \$40,000 amount of the payment, however, is sharply
4 disputed and not readily ascertainable from the available evidence. There was no written
5 deferred compensation plan between Racialto and the Committee for his campaign work. And
6 whether an oral agreement existed is a point of conflict among the parties, although the evidence
7 reflects that they discussed at least the possibility of compensation shortly before Racialto sought
8 payment.

9 Thus, because the available information does not indicate that the Committee agreed to
10 pay Racialto before March 2010, there is no basis to conclude that the Committee had incurred a
11 debt that it may have been required to disclose before it received the demand for payment.
12 Moreover, because it appears that Racialto performed much of the work that would have been the
13 subject of the Committee's payment during the same reporting period in which he made his
14 demand and the Committee issued that payment, no reportable debt would have been incurred as
15 to that work. Furthermore, even if the payment were characterized not as compensation but as
16 severance — similar to the payments several campaign staffers received at the same time — such
17 a payment would not constitute a debt that should have been reported in an earlier disclosure
18 report. Therefore, the Commission takes no further action with regard to the Committee's
19 alleged violation of 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

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⁴ The amount the Committee should pay to Racialto is currently the subject of a pending civil suit between the parties. See *Massa for Congress v. Joseph Racialto*, No. 11-1690CV (N.Y. Sup. Ct. Mar. 4, 2011) (complaint originally filed in Monroe County on Mar. 4, 2011, but venue changed to Steuben County on Nov. 28, 2011).

1 **B. Personal Use**

2 The Complaint asserted that the Committee's \$40,000 payment to Racalto constituted
3 impermissible personal use of campaign funds — either because it was excessive or obtained
4 through false pretenses. Committees and candidates have latitude to retain services and
5 compensate staff within commercially reasonable bounds, and the available evidence suggests
6 that at least some portion of the payment was legitimate compensation for Racalto's work on the
7 campaign. Additional Commission action relating to the value of Racalto's services would be
8 wasteful and unwarranted, however, particularly because the issue is currently being litigated by
9 the parties. Accordingly, the Commission dismisses the allegation that the Committee or Rep.
10 Massa violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)), and closes the file.⁵

⁵ See *Heckler v. Cheney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (recognizing that dismissal may be warranted due to factors such as the "vagueness or weakness of the evidence").