



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 03 2012

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RE: MUR 6465
Gary Husk

Dear Mr. Mandell:

On December 5, 2011, the Federal Election Commission (the "Commission") notified your client, Gary Husk, of a complaint alleging that your client violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your client with a copy of the complaint.

After reviewing the allegations contained in the complaint, your client's response, and publicly available information, the Commission on November 8, 2012, found reason to believe that Gary Husk knowingly and willfully violated 2 U.S.C. § 441f, a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

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Mr. Michael Mandell, Esq.
MUR 6465 (Gary Husk)
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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. 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

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Gary Husk

MUR 6465

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by Melanie Sloan, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Arizona Sports Foundation, dba The Fiesta Bowl ("Fiesta Bowl") is registered as a non-profit corporation in Arizona and is organized under section 501(c)(3) of the Internal Revenue Code. The Fiesta Bowl states that through its creation and sponsorship of the Festival of College Football – which includes numerous Arizona events such as the annual Tostitos Fiesta Bowl and the Insight Bowl college football games – it "promote[s] volunteerism, athletic achievement and higher education." <http://www.fiestabowl.org/index.php/fiestabowl/about>.

Attached to the Complaint was a 276-page investigative report that was made public by the Fiesta Bowl in March 2011, which contained a detailed account of how Fiesta Bowl employees made a total of \$30,400 in federal contributions between 2001 and 2009 that were reimbursed using corporate funds. See Final Report of Counsel to the Special Committee of the Board of Directors of the Fiesta Bowl, http://www.fiestabowl.org/documents/reports/Fiesta_Bowl_Final_Public.pdf ("Final Report").

According to the Final Report, Gary Husk assisted in soliciting and collecting contributions from Fiesta Bowl employees that were typically reimbursed, at the direction of former Fiesta Bowl

1 CEO John Junker, through payments disguised as "bonuses." Final Report at 35-37. Former
2 Fiesta Bowl COO Wisneski generally signed and delivered the reimbursement checks to the
3 contributors, and the Final Report included copies of checks and spreadsheets on which the word
4 "Bonus" was handwritten in the memo space. *Id.* at 41, 57, 61, 62, 144.

5 Wisneski was indicted in federal district court in Arizona on charges relating, in part, to
6 the contribution reimbursements at issue, and Wisneski and Junker later each entered guilty
7 pleas. *See* Indictment, *United States v. Natalie Wisneski*, Crim. No. 11-02216 (D. Ariz. filed
8 Nov. 15, 2011) ("Wisneski Indictment"); Plea Agreement, *United States v. Natalie Wisneski*,
9 Crim. No. 11-02216 (D. Ariz. filed Mar. 15, 2012) ("Wisneski Plea Agreement"); Criminal
10 Information, *United States v. John Junker*, Crim. No. 12-00511 (D. Ariz. filed Mar. 13, 2012)
11 ("Junker Information"); Plea Agreement, *United States v. John Junker*, Crim. No. 12-00511
12 (D. Ariz. filed Mar. 13, 2012) ("Junker Plea Agreement").

13 Gary Husk appears to have been a driving force behind the Fiesta Bowl's campaign
14 contributions and played a core role in the Fiesta Bowl's flawed initial investigation that found
15 no "credible" evidence that any contributions were reimbursed. According to the Final Report,
16 Husk assisted in soliciting and collecting contributions from Fiesta Bowl employees, and the
17 information suggests he was aware that the reimbursement activity was unlawful and attempted
18 to cover up the scheme by manipulating the investigation. Final Report at 35-37.

19 In response to the Complaint, Husk provided background on his role at the Fiesta Bowl
20 and generally denies knowledge of, or involvement in, any reimbursement scheme. Husk states
21 that the Fiesta Bowl first retained his lobbying firm in approximately 2001, and that he served as
22 "lead consultant assigned to the Fiesta Bowl." Husk Resp. at 3. When the Fiesta Bowl
23 management and Board of Directors expressed an interest in becoming more politically active,

1 Husk explained to unnamed "representatives" of the Fiesta Bowl that any political involvement
2 could only occur with individuals "since corporate political activities were prohibited" *Id.*
3 Husk acknowledges forwarding contribution solicitations from the campaigns of various federal
4 candidates to clients that included the Fiesta Bowl, but claims he sent the requests "exclusively"
5 to Junker and never directly solicited contributions from anyone else affiliated with the Fiesta
6 Bowl. *Id.* at 3-6.

7 Husk claims that he "had absolutely no knowledge that the Fiesta Bowl was engaged in
8 the practice of reimbursing individuals for their political contributions," *Id.* at 7. He adds that,
9 "[l]ike the Board of Directors, [he] had no knowledge that persons affiliated with the Fiesta Bowl
10 had made false statements, concealed or misrepresented this information for more than a
11 decade." *Id.* at 7-8. In raising questions about the credibility of Fiesta Bowl employees, Husk
12 singles out Wisneski by name, claiming that she falsely alleged that he authorized the
13 reimbursement scheme. As noted in the Final Report, Wisneski claimed that when she sought
14 Husk's advice as to whether she could use bonuses to reimburse others for their campaign
15 contributions, he replied, "Yeah, it's done all the time." Final Report at 49. Husk denies that he
16 ever made such a statement, and asserts that he "routinely advised clients" against reimbursing
17 contributions. Husk Resp. at 8. Husk also notes that Wisneski asserts that the conversation
18 occurred around 2005, which would be "completely illogical" given that the Final Report
19 indicated that the scheme began five years earlier. *Id.* at 9. Focusing on Wisneski's recent
20 criminal indictment, Husk states that she has "a history of dishonesty that has completely
21 destroyed her credibility." *Id.* at 10.

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended, (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. In addition, "no person shall . . . knowingly help or assist any person in making a contribution in the name of another." 11 C.F.R. § 110.4(b)(1)(iii). "[K]nowingly helping or assisting" applies to "those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another" Explanation and Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,105 (1989).

The Act prescribes additional penalties for violations that are knowing and willful. *See* 2 U.S.C. § 437g(a)(5)(B); (6)(C). The knowing and willful standard requires knowledge that one is violating the law. *FEC v. Damesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence does not have to show that the defendant had specific knowledge of the Act or Commission regulations; an inference of knowing and willful conduct may be drawn from the defendant's scheme to disguise the source of funds used in illegal activities. *Id.* at 213-15.

As noted in the Final Report, several individuals provided information about Husk's involvement in the Fiesta Bowl's contribution reimbursement scheme, as well as his prominent role in the initial investigation, during which witnesses appear to have been carefully chosen and coached by Husk so as not to reveal the reimbursements. Indeed, documents from multiple sources describe Husk as a significant participant in the reimbursement scheme and call into serious question the credibility of his denials.

1 First, the Junker Plea Agreement, which includes several references to "Lobbyist C," who
2 appears to be Husk based on the Final Report and other available information, details Husk's
3 central role in the scheme.¹ In the Junker Plea Agreement, Junker states that Husk informed him
4 early on that campaign contributions could "assist in the effort to remain on solid footing with
5 those important politicians whose support could be vital in ensuring that a new stadium would be
6 built . . ." Junker Plea Agreement at 10. At Husk's suggestion, Junker solicited Board
7 members and employees for contributions, but this proved to be problematic because, while they
8 "understood why the contributions would be in the best interests of the Fiesta Bowl, they did not
9 understand why the donations would be in their own individual self-interest." *Id.*

10 Husk then suggested that Junker tap into a "discretionary bonus" pool of funds to
11 reimburse employee contributions. *Id.* at 11. Husk advised Junker that as long as "the dollar
12 amount of the political contribution obtained from a Fiesta Bowl employee did not match the
13 bonuses later given to the . . . employee on a dollar-for-dollar basis, then as a practical matter no
14 link could be proved between the political contribution and its repayment through reimbursement
15 by a subsequent bonus." *Id.* When Junker "questioned this," Husk "told [him] that 'everyone
16 did it.'" *Id.*

17 Factual details provided by Wisneski concerning Husk's involvement corroborate
18 Junker's account, including Husk's role in selecting candidates to receive contributions. *See*
19 Wisneski Plea Agreement at 10. Wisneski's account of Husk's advice in the Final Report
20 regarding the reimbursements (she claims he said "Yeah, it's done all the time") is consistent
21 with the statement that Junker attributes to Husk, *i.e.*, "everyone did it." Final Report at 49.

¹ See, e.g., Craig Harris, *Fiesta Plea Deals Shed Light on Lobbyist*, ARIZ. REPUBLIC, Mar. 25, 2012 ("Junker's attorney in February [2012] identified Husk as Lobbyist C during a Maricopa County Superior Court hearing on Junker's felony plea agreement with the Arizona Attorney General's Office.").

1 Thus, it appears that, notwithstanding the fact that Husk was an outside consultant who did not
2 hold a position of leadership within the Fiesta Bowl organization, Husk was instrumental in
3 initiating and instigating the reimbursement scheme.²

4 Both the Wisneski Indictment and the Junker Information also contain the same detailed
5 description of Husk's role in two incidents that occurred in early 2010. "On or after January
6 2010 . . . at the urging" of Husk, Wisneski wrote "child care" in the margins of a reimbursement
7 check she received for her contribution to the campaign of an Arizona state senator. Junker
8 Information at 10. Around the same time, Husk also "directed Wisneski to omit Junker's name
9 from a list of bonuses paid to Fiesta Bowl employees." *Id.*; *see also* Wisneski Indictment.

10 Finally, during Husk's screening of staff to be interviewed by outside counsel during the
11 initial investigation, four employees (Peggy Eyanson, Mary McGlynn, Monica Simental, and
12 Angela Holt) stated that they informed Husk they were aware of contribution reimbursements,
13 yet they were not selected to be interviewed. Final Report at 83. Eyanson, Director of Business
14 Operations for the Fiesta Bowl, said she told Husk that she had been reimbursed and that she was
15 "not going to lie under oath." *Id.* at 89. She said that Husk replied, "We are going to steer the
16 investigation another way and we are not going to let them talk to you." *Id.* Wisneski recalled
17 being coached by Husk with a list of interview questions: "We went through them. And I
18 remember . . . I gave an answer, and he said 'why don't you answer it this way.'" *Id.* at 84
19 (Wisneski does not say in the Final Report what Husk meant by "this way"). Kelly Keogh, who

² As to Husk's point that it would be "illogical" for him to make this statement to Wisneski in 2005 if the scheme began five years earlier, Husk erroneously assumes that reimbursements took place at the same time that the corresponding contributions were made. The available information suggests that, although some contributions may have been made prior to 2005, those contributions were not reimbursed until 2005 or thereafter. Under these circumstances, it makes sense that Husk would not have made the alleged statement until around 2005.

1 served as Executive Manager for Junker, also said that Husk coached her prior to her interview.

2 *Id.* at 86-87.

3 Although Husk does not address the accounts of these witnesses in his Response to the
4 Complaint, the Final Report states that he denied all of their assertions. *Id.* at 97. Given the
5 consistency of the contrary accounts of several witnesses, however, the weight of the record
6 evidence provides reason to believe that Husk intentionally manipulated the initial investigation
7 to ensure that the Fiesta Bowl's reimbursement practices would not be revealed. Husk's
8 substantial role in impeding the investigation not only provides inferential evidence of Husk's
9 involvement in the original scheme to evade 2 U.S.C. § 441f but served to advance that scheme
10 as well.

11 While the felony convictions of Junker and Wisneski for making false statements may
12 raise broad questions as to their credibility, their accounts of Husk's acts are not only consistent
13 but quite detailed. Moreover, key information incriminating Husk has been corroborated by
14 other witnesses untainted by felony conviction who appear to have no apparent motive to provide
15 inaccurate or untruthful information. In sum, after ascribing appropriate weight to relevant facts
16 gathered from a variety of sources, there is sufficient evidence to conclude at this preliminary
17 stage of the Commission's inquiry that Husk played a key role — along with Junker and
18 Wisneski — in devising and then attempting to cover up the reimbursement scheme.
19 Accordingly, the Commission finds reason to believe that Gary Husk knowingly and willfully
20 violated 2 U.S.C. § 441f.