

FEB 18 2000

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BEFORE THE FEDERAL ELECTION COMMISSION 2000 FEB 18 P 3:12

In the Matter of)

Matthew Fong)

Matt Fong for State Treasurer and)

William R. Turner, as treasurer)

MUR 4530

SENSITIVE

GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

This Office recommends that the Commission take no further action as to Matthew "Matt" Fong, Matt Fong for State Treasurer and William R. Turner, as treasurer, and approve the appropriate letters.

II. BACKGROUND

On June 2, 1998, the Commission found reason to believe that Matt Fong, Matt Fong for State Treasurer and William R. Turner, as treasurer, each knowingly and willfully violated 2 U.S.C. § 441e(a). The Commission's findings stem from two contributions by Sioeng San Wong (a/k/a Ted Sioeng) totaling \$50,000 and a \$50,000 contribution from Panda Estates Investment, Inc. In conjunction with the reason to believe notification, the Commission issued document subpoenas and interrogatories to Matt Fong, Matt Fong for State Treasurer and William R. Turner, as treasurer ("Respondents"). Respondents provided relevant documents and responses to the interrogatories. See Attachment Nos. 1 and 2.

III. INFORMATION OBTAINED FROM INVESTIGATION

A. Circumstances Surrounding the Solicitation of the Contributions

According to the available information, Matt Fong ran successfully for California State Treasurer in 1994 but was left with a significant campaign debt.¹ He sought help to retire the debt. In or about October or November 1994, Alex Spanos, owner of the San Diego Chargers football team, made a \$100,000 contribution to Matt Fong's campaign and challenged the Chinese-American community to match the contribution. Matt Fong subsequently approached members of the Chinese-American community concerning the challenge, including Ted Sioeng, a prominent Asian businessman.² Thereafter, at various times from October 1994 to April 1995 when Matt Fong saw Ted Sioeng at community fundraising events, he explained the challenge to him and his family and asked them to contribute to his campaign.³ Ted Sioeng eventually told him that he would contribute. The two Sioeng San Wong contributions at issue resulted from those solicitations. According to Respondents, Matt Fong also explained to Ted Sioeng and his family the legal restrictions for contributing to the campaign.

¹ Matt Fong was also an unsuccessful candidate for the U.S. Senate in 1998.

² Ted Sioeng, an Indonesia national, is a citizen of Belize. He obtained his Belizean citizenship through the Belize Economic Citizenship Investment Program in 1989. He is no longer in the United States and his whereabouts are unknown. During the relevant period, Ted Sioeng owned several business operations in Asia. His main overseas business consists of a cigarette enterprise in Singapore that manufactures and distributes Red Pagoda Mountain cigarettes. The Sioeng family also operated several U.S. businesses in California presided over by Ted Sioeng's eldest daughter, Jessica Elnitiarta. Among the family's U.S. business holdings and interests are International Daily News, a Chinese language newspaper in Los Angeles; Metropolitan Hotel, a hotel and restaurant in Los Angeles; Pacific Motel, a modest establishment in the Los Angeles area; Panda Industries, an import and export business; and Panda Estates Investment, Inc., a real estate company incorporated in April of 1993. The family also owns part of Grand National Bank, located in Alhambra, California.

³ Ted Sioeng's daughter, Jessica Elnitiarta, previously had made a \$2,000 contribution to Matt Fong's campaign on or about September 30, 1994. Jessica Elnitiarta and her siblings, Indonesian nationals, came to the United States in 1986 with their parents. Jessica and her siblings use the surname of Elnitiarta, their mother's maiden name, rather than Sioeng. Except for Ted Sioeng, the Elnitiartas were all permanent residents of the United States during the relevant period.

With respect to the two contributions from Sioeng San Won, Respondents stated that on or about April 20, 1995, Matt Fong contacted Ted Sioeng's office to follow up on his promise to make a contribution and was told to come on over. When Matt Fong arrived at Ted Sioeng's office, Ted Sioeng again asked him about the rules and limits for contributions, and whether they were different than the limits for other races. Matt Fong reiterated the basic campaign contribution rules governing California elections that he had previously explained to Ted Sioeng and his family: that the contribution had to be from a U.S. citizen or a green card holder, that there was no dollar limit, and that corporate contributions were acceptable. During the visit, Matt Fong was presented with a \$20,000 check from the account of Sioeng San Wong. Respondents further stated that Ted Sioeng asked Matt Fong to complete the check, since he did not know how to fill it out, and Matt Fong refused.⁴

According to Respondents, when Matt Fong saw the name on the check, he believed that the check was from Ted Sioeng's son, son-in-law, daughter, or other family member because the check was not in the name of Ted Sioeng. When questioned in his deposition about the basis of his belief that the contribution was from someone other than Ted Sioeng, Matt Fong testified that he recollected Ted Sioeng stating that it was from his family but acknowledged that he may have assumed it. Matt Fong Dep., Vol. 1 at 59-61. Matt Fong also testified that he was unaware that

⁴ In a March 12, 1998 deposition by the House Committee on Government Reform and Oversight Campaign ("Burton Committee"), Matt Fong testified that the check was already made out, except for the payee. Matt Fong Dep., Vol. 1 at 32-33, 47-51. According to Respondents, Matt Fong advised Ted Sioeng that he does not fill out checks, but that it should be made paid to the order of "Matt Fong for State Treasurer." Ted Sioeng then handed the check to someone in the office to complete. When that person did not know how to spell "treasurer," Matt Fong wrote the word on the back of his card and placed it on the desk in front of the person. This unidentified person then filled in the information on the check. The check was then placed in an envelope and handed to Matt Fong, who put it into his pocket. Matt Fong later turned the check over to his campaign. Matt Fong's campaign received another \$30,000 contribution from Sioeng San Wong, by check dated April 28, 1999. According to Respondents, Matt Fong does not know if this check was included in the envelope with the first \$20,000 check or whether it was mailed or delivered to Matt Fong's campaign offices at a later date.

Jessica and her siblings use the surname of Elnitiarta rather than Sioeng. Matt Fong Dep., Vol. 2 at 133-134. And, in telephone discussions with this Office, Matt Fong asserted that he and his campaign believed that San Wong Sioeng and Ted Sioeng were two different people as is reflected in their contemporaneous internal campaign documents.⁵

Campaign documents provided by Respondents showed that the two contributions were recorded consistent with the campaign's prevailing understanding as follows: Ted Sioeng was listed as the individual who facilitated the contribution ("Track Name"), and Sioeng San Wong was listed as the contributor.⁶ See Attachment No. 3 at 41-42. The campaign also reported the contributions accordingly on its Schedule A, Monetary Contributions Received, California 1994 Form 490 for the period July 1, 1995 through December 31, 1995. See Attachment No. 3 at 38-40.

On or about December 14, 1995, Panda Estates Investment, Inc. ("Panda Estates"), a California real estate company owned by Jessica Elnitiarta, also made a \$50,000 contribution to Matt Fong's campaign with a corporate check signed by Jessica Elnitiarta. According to Respondents, sometime prior to this contribution, Matt Fong had met Jessica Elnitiarta and Ted

⁵ In his deposition, Matt Fong acknowledged that he did not ask Ted Sioeng about his citizenship because he had no basis to question his residency status. Matt Fong Dep., Vol. 1 at 30-31. He explained that Ted Sioeng was a prominent California businessman with significant standing in the Asian community, and he had known Ted Sioeng and his family for over ten years. Matt Fong Dep., Vol. 2 at 177. He further explained that he was aware that Ted Sioeng and his family were present at many political fund-raisers and community functions and were making contributions to other campaigns. *Id.* In fact, he met Ted Sioeng around 1988 at a Republican rally in California through Julia Wu, another Asian state elected official. In addition, Matt Fong pointed out that he had already advised Ted Sioeng of the eligibility rules for making contributions, and, therefore, expected him to act consistent with that advice. Matt Fong Dep., Vol. 1 at 24-25, 51-52.

⁶ In his deposition, Matt Fong explained that the Track Name is the name entered into the campaign's computer to track the person who facilitated the contribution, the campaign's internal mechanism for follow up. Matt Fong Dep., Vol. 1 at 37, 39. A thank you letter is generally sent to the person who facilitated the contribution. *Id.* at 39. As the patriarch of the family, Ted Sioeng's name was used to track contributions from his family and friends. Consequently, correspondence concerning the Sioeng San Wong contributions was addressed to one of Ted Sioeng's businesses. Matt Fong Dep., Vol. 1 at 42-46.

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Sioeng at another event and told them that he would appreciate it if they could continue helping his campaign. The \$50,000 contribution followed. The check was paid on December 18, 1995. Bank records show that the contribution was made with foreign funds from Pristine Investments Limited, a private company registered in Hong Kong.⁷ This contribution was reported consistent with the other contributions - Ted Sioeng as the facilitator and Panda Estates as the contributor.

B. Remedial Action Taken

In mid-April of 1997, the media raised questions regarding contributions by Ted Sioeng and his family. Shortly thereafter, by letter dated April 21, 1997, Respondents sent separate letters to Ted Sioeng and to Panda Estates seeking verification of the legality of the contributions within twenty-four hours. See Attachment No. 1 at 9, 16. After not receiving the requested response, Respondents refunded all of the contributions the next day, on April 22, 1997. See Attachment No. 1 at 20-27.

C. Discussion

Although the contributions at issue were from impermissible foreign funds under section 441e(a) of the Act, the prevailing issue is whether Respondents can avail themselves of the safe harbor provided by the Commission's regulations at 11 C.F.R. § 103.3(b). As relevant herein, those regulations require the treasurer to examine all contributions received for evidence of illegality. The regulations further require that a treasurer return or refund contributions that present genuine questions as to whether they were made by corporations, labor organizations, foreign nationals, or Federal contractors. 11 C.F.R. § 103.3(b)(1). If the treasurer later discovers

⁷ The bank records show that the balance in Panda Estates' account was only \$7,000 when the contribution was made, and the \$50,000 check (and another check) left Panda Estates with a balance of negative \$43,888.55. On December 19, 1995, through a durable power of attorney, Jessica Elnitiarta transferred \$50,000 to Panda Estates' account from the account of Ted Sioeng's sister, Yanti Ardi, an Indonesian resident and foreign national. Bank

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that an apparently lawful contribution is illegal based on new evidence not available at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

The available information clearly shows that the contribution from Panda Estates would not have presented a "genuine question" to warrant the additional procedures set forth in 11 C.F.R. § 103.3(b)(1) for suspect contributions. The evidence establishes that Panda Estates was a viable U.S. corporation and Jessica Elnitiarta, its sole executive officer, was a permanent resident during the relevant period. In short, there were no apparent external factors that would cause Respondents to suspect that the funds used to make the contribution were partly from a foreign source. Indeed, absent a thorough review of the bank records for Panda Estates and related accounts, it would have been impossible to know that impermissible funds were used to make the contribution.

On the other hand, the Sioeng San Wong contributions present a closer call as to whether further scrutiny was required, considering that Ted Sioeng's name was not on the check and Mr. Sioeng requested that Matt Fong fill out the payee line. Nonetheless, this Office does not believe that further enforcement action is worthwhile in this instance. The weight of the available information indicates that, although arguably Respondents could have been more vigilant with respect to some of the contributions, there does not appear to be a flagrant disregard of the statute. In fact, Respondents took immediate and complete remedial action after they were unable to verify the legality of the contributions once questions were raised about them, in compliance with the Commission regulations at 11 C.F.R. § 103.3(b)(2). Accordingly, this


records further show that on December 11, 1995, prior to the \$50,000 transfer, Yanti Ardi's account was credited with a wire transfer of \$150,000 from Pristine Investments Limited.

Office recommends that the Commission take no further action against Respondents in this matter. Instead, this Office proposes issuing letters admonishing each respondent against similar activity.

IV. RECOMMENDATIONS

1. Take no further action against Matthew "Matt" Fong, Matt Fong for State Treasurer and William R. Turner, as treasurer.
2. Close the file as to Matthew "Matt" Fong, Matt Fong for State Treasurer and William R. Turner, as treasurer.
3. Approve the appropriate letters.

2/18/00
Date


Lawrence M. Noble
General Counsel

Attachments:

1. Responses to Commission document subpoena.
2. Responses to Commission interrogatories.
3. Respondents' submission dated January 21, 2000.

Staff Assigned: Kamau Philbert