



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5513
Norway Hill Associates, Inc.,)
David Carney, H. Lauren Carney,)
James McKay, Nader for President 2004)
and Carl M. Mayer, in his official capacity)
as treasurer, and Choices for America LLC)
)

STATEMENT OF REASONS
VICE CHAIRMAN MICHAEL E. TONER AND COMMISSIONERS DAVID M.
MASON, BRADLEY A. SMITH AND ELLEN L. WEINTRAUB

This matter involves allegations that Norway Hill Associates, Inc. made a corporate contribution to Nader for President 2004 (the "Nader Committee") when it hired a temporary employment agency to solicit signatures on petitions to place Ralph Nader on the New Hampshire ballot for President. The bill for the petition gathering activity totaled \$6,265. David Carney, H. Lauren Carney, and James McKay are principals in Norway Hill and each paid \$2,000 of the employment agency bill, leaving a \$265 remainder, which the Nader Committee paid. The Nader Committee reported an in-kind contribution of \$2,000 from each of the Norway Hill principals.

1 The Office of General Counsel recommended that the Commission find reason to believe
2 that Norway Hill and its principals knowing and willfully violated 2 U.S.C. 441b by making a
3 corporate contribution to the Nader Committee..¹

4 The Commission concludes that the facts in this matter do not warrant an investigation
5 and voted 6-0 as a matter of prosecutorial discretion, in the proper ordering of its priorities and
6 resources, to dismiss the complaint against all respondents. *See Heckler v. Chaney*, 470 U.S. 821
7 (1985).

8 The available record indicates that although Norway Hill originally made the payments to
9 the employment agency for the petition gathering, the three principals each likely reimbursed
10 Norway Hill within a commercial reasonable period of time from their individual funds,
11 converting the potential illegal corporate contribution into permissible in-kind contributions.
12 The \$2,000 contributions were properly reported by the Nader Committee.

13 The Nader Committee reimbursed the corporation for the remaining \$265 in potentially
14 illegal contributions. The Commission does not see the value of spending investigatory
15 resources to determine whether this small amount was reimbursed in a commercially reasonable
16 period.

17 More importantly, the Commission notes that there was nothing in the factual record or
18 Commission practice that would warrant a knowing and willful finding in this matter should it
19 have chosen to go forward. There was presented in the complaint no credible information from
20 which the Commission could draw the inference that the respondents in this matter were
21 attempting to evade the contribution limits. In fact, the exact opposite conclusion can be drawn,

¹ The Office of General Counsel recommended taking no action at this time regarding the Nader Committee pending an investigation of Norway Hill. The Office of General Counsel also recommended that the Commission find no reason to believe that Choice for America, LLC violated the Act in connection with this matter. The Commission approved those recommendations.

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1 given that the respondents attempted to correct potential violations prior to the filing of the
2 complaint and the Nader Committee properly reported all aspects of these transactions.

3 The Office of General Counsel's assumption that knowing and willful conduct can be
4 inferred simply because at least one respondent was a professional political consultant is without
5 support in case law. See First General Counsel's Report at 19-20. Commission practice has been
6 to use the knowing and willful standard at the reason-to-believe stage when there is factual
7 evidence of intentional conduct, or where specific circumstances otherwise permit the inference
8 that the respondents were aware that their activities were illegal.² Knowing and willful violations
9 appropriately carry enhanced penalties for the most culpable actors. These are serious findings
10 and they must be based on facts, not status.

11 The inference that status as a political professional should weigh significantly in findings
12 of knowing and willful violations of the law would substantially and unproductively broaden the
13 category of individuals who are subject to heightened penalties and criminal investigations. This
14 would be an inappropriate expansion of a provision that provides increased punishment
15 exclusively in cases that reveal intentional efforts to violate the Federal Election Campaign Act.

18 8/16/05
19 Date

Michael E. Toner
Michael E. Toner
Vice-Chairman

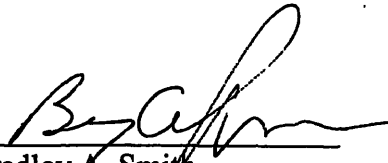
22 8/16/05
23 Date

David M. Mason
David M. Mason
Commissioner

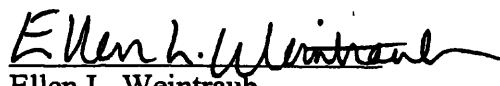
² The Commission has, for example, made knowing and willful findings in circumstances where the very nature of the violation indicates knowledge that the activity is otherwise illegal under the law (such as contributions in the name of another).

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8/12/05
Date


Bradley A. Smith
Commissioner

8/16/05
Date


Ellen L. Weintraub
Commissioner

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