

JUL 15 2005

FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

2005 JUL 15 A 10:07

In the Matter of
Salvatore Trovato
Dawn Giordano

MUR 5453

SENSITIVE

GENERAL COUNSEL'S REPORT # 9

I. ACTIONS RECOMMENDED

Enter into conciliation with Salvatore Trovato prior to a finding of probable cause to believe in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3); take no further action as to Dawn Giordano in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3), and close the file as to this respondent; approve the attached proposed Conciliation Agreement; and approve the appropriate letters.

II. BACKGROUND

The Commission previously found reason to believe that Salvatore Trovato and Dawn Giordano ("Respondents") violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).¹ The Commission's findings were based upon information contained in a referral from the Reports Analysis Division ("RAD") indicating that Respondents made an excessive contribution to the Giordano for US Senate Committee ("the Committee") in connection with a certificate of deposit pledged as collateral for a \$300,000 bank loan to the Committee. First General Counsel's Report dated May 3, 2004, at pp. 8-11. The information contained in the RAD referral also indicated that Dawn

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

Giordano's excessive contribution to the Committee included her equity in real property jointly owned with her spouse, candidate Philip Giordano, and pledged as additional collateral for the bank loan. *Id.*

III. SUMMARY OF INVESTIGATION

The investigation revealed that on July 14, 2000, the same day that the \$300,000 loan from Patriot National Bank ("PNB") to the Committee was approved by PNB's board of directors, Mr. Trovato gifted \$300,000 to the Giordanos, which, in turn, was placed in a certificate of deposit on account at PNB. Simultaneously, the Giordanos signed pledge agreements, pledging the entire proceeds of the certificate of deposit as cash collateral for the loan. General Counsel's Brief to Salvatore Trovato dated May 10, 2005, at p. 2. There was no evidence uncovered during the investigation to establish a repetitious custom of gifts in amounts similar to the monies in question from Mr. Trovato to the Giordanos or any of his other children.

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Given these factors, we recommend that

the Commission enter into pre-probable cause conciliation with Salvatore Trovato in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) prior to a finding of probable cause to believe, and approve the attached proposed Conciliation Agreement.

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We also recommend that the Commission take no further action with respect to Dawn Giordano. The timing and circumstances of Mr. Trovato's \$300,000 gift establish that he intended it as a campaign contribution. General Counsel's Brief to Salvatore Trovato dated May 10, 2005, at p. 5 and footnote 6. Furthermore, the creditworthiness of the loan to the Committee

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Id. at p. 5; *see* 11 C.F.R. § 110.10(b)(2). Indeed, the evidence established that Mr. Trovato had never given gifts to any of his children that were remotely close in size to the \$300,000 payment at issue here. Furthermore, the \$300,000 payment occurred not only after Mr. Giordano's candidacy was announced, but also on the precise day the loan was made and in the exact amount required to secure the loan. *Id.*

Dawn Giordano's name, along with her husband's, was placed on the certificate of deposit. However, it appears that she was a conduit for the contribution from Mr. Trovato to the Committee. Although this could be a basis for recommending that the Commission find reason to believe that the Respondents also violated 2 U.S.C. § 441f, for the reasons discussed *infra*, we recommend that the Commission make no additional findings in this matter, and take no further action as to Dawn Giordano in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3). We further recommend that the Commission enter into pre-probable cause conciliation with Mr. Trovato in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3), and approve the attached proposed Conciliation Agreement.

IV. DISCUSSION

Following the investigation, we served Mr. Trovato's counsel with the General Counsel's Brief notifying him of our intention to recommend that the Commission find probable cause to believe Mr. Trovato violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3). General Counsel's Brief to Salvatore Trovato dated May 10, 2005.

1 was based on the cash collateral in the form of the certificate of deposit.³ General Counsel's
2 Brief to Salvatore Trovato dated May 10, 2005 at p. 2 and footnotes 4 and 7. Although Mr.
3 Trovato made a contribution in the name of another, and Mrs. Giordano functioned as a conduit
4 in this transaction, *see* 2 U.S.C. § 441f, we do not believe pursuing either Respondent in this
5 regard is warranted. We have uncovered no evidence during the investigation that suggests
6 Mrs. Giordano knowingly permitted her name to be used to effect the contribution from Mr.
7 Trovato to the Committee.⁴

³ Because the loan was already fully secured by the certificate of deposit, the mortgage, which was taken on the Giordano's home "in the abundance of caution" as defined by bank regulations found at 12 C.F.R. § 34.43, had no bearing on PNB's willingness to approve the loan.

⁴ Although she did sign documents pledging her share of the certificate of deposit and real property as collateral for the loan, we believe she had a passive role in the transaction (*i.e.*, she did not orchestrate the transaction nor did she know that by signing the documents she was effectuating a contribution from Mr. Trovato to the Committee).

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Based upon the foregoing, we recommend that the Commission make no additional findings in this matter; take no further action with respect to Dawn Giordano in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3), and close the file as to this Respondent.

V. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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VI. RECOMMENDATIONS


1. Enter into conciliation with Salvatore Trovato prior to a finding of probable cause to believe in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).
2. Take no further action with respect to Dawn Giordano in connection with 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3), and close the file as to this Respondent.
3. Approve the attached proposed Conciliation Agreement.
4. Approve the appropriate letters.

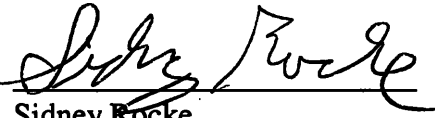
Lawrence H. Norton
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Date

7/14/05

BY:


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Attachment

1. Proposed Conciliation Agreement