

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5641

DATE COMPLAINT FILED: January 14, 2005

DATE OF NOTIFICATION: January 24, 2005

LAST RESPONSE RECEIVED: March 3, 2005

DATE ACTIVATED: December 20, 2005

EXPIRATION OF SOL: January 6, 2009

COMPLAINANT:

The Gordon Motion Picture Company

RESPONDENTS:

Robert Shrum

John Kerry For President, Inc.

David Thorne,

in his official capacity as treasurer

Shrum Devine & Donilon, Inc.

RELEVANT STATUTES:

None

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

This matter arises from a complaint filed by The Gordon Motion Picture Company (“Gordon”). The complaint asserts, without alleging a specific violation of the Federal Election Campaign Act of 1971, as amended (“the Act”), that John Kerry for President and David Thorne, in his official capacity as treasurer, (“Kerry for President”) breached a contract the committee entered into with Gordon that purportedly gave the campaign a limited license to use footage of a film produced by Gordon called “Brothers in Arms.” The complaint alleges that, through the other respondents, Robert Shrum and his political consulting company, Shrum Devine & Donilon, Inc., Kerry for President used footage of the film in a manner not consistent with the contract. The Respondents counter that, even if the factual allegations are true, the complaint fails to state a violation of the Act. As more fully set forth below, this Office recommends that the Commission dismiss the complaint against all Respondents.

II. FACTUAL SUMMARY

Gordon asserts that it entered into a contract with Kerry for President on November 30, 2003. The contract purportedly stated the terms under which Kerry for President could use footage of a film produced by Gordon called “Brothers in Arms.” The complainant did not attach the agreement between Gordon and Kerry for President. The complaint makes two allegations against the Respondents. First, the complaint alleges the Respondents violated the terms of that contract by making an “unlawful reproduction” to “facilitat[e] the unlicensed mass duplication of the film.” Complaint, at 1. Gordon does not indicate what was done with the

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1 duplicates allegedly made by the Respondents. Second, it alleges the Respondents used footage
2 from the film or "general concepts presented in the film" in political ads.¹ Complaint, at 1.

3 The complaint further asserts that, upon learning of the alleged breach, it's agent, Iris G.
4 Rossi, attempted to notify Kerry for President and Mr. Shrum. Although Ms. Rossi asserts that
5 neither responded, the complaint does not include copies of any correspondence to indicate who,
6 specifically, she attempted to contact and when the attempts occurred.

7 The Respondents argue that neither of the allegations, if factually true, constitute
8 violations under the Act and, thus, that the complaint is legally insufficient. They also respond
9 that the second allegation – unlicensed use of footage or general concepts of the film in political
10 ads – is not supported by any "source of information that reasonably gives rise to a belief in the
11 truth of the allegations presented" and, thus, is factually insufficient under 11 C.F.R. § 111.4(d).

12 **III. LEGAL ANALYSIS**

13 The complaint provides insufficient factual predicate to open an investigation, because
14 there is no information that suggests any respondent violated the Act. The complaint does not
15 actually allege that any respondent violated the Act,² and the facts asserted in the complaint do
16 not give rise to a potential violation of the Act. Furthermore, there is no information from other
17 publicly available sources to indicate a violation occurred.

18 The complaint appears to be nothing more than a contract dispute between two private
19 parties and, therefore, appears to be outside the scope of the Act. Because of the lack of detailed

¹ It is clear from the complaint that Gordon considers the two allegations to be completely separate. That is, the "unlawful reproduction" does not appear to be simply the use of the footage in political advertisements.

² Some Commissioners have opined that a complaint must allege that a violation has actually occurred for the Commission to have jurisdiction over the matter pursuant to 2 U.S.C. § 437g(a)(1). See Statements of Reasons of Commissioners Toner and Vice Chairman Smith in MUR 5338 (The Leadership Forum). The Commission need not reach this issue because neither the complaint nor the public record here provides facts supporting a reasonable inference that a violation has occurred or is about to occur.

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information regarding the contract and any breach thereof and the lack of an actual allegation in the complaint, there does not appear to be a basis for opening an investigation. Thus, this Office recommends that the Commission dismiss the complaint against all Respondents.³

IV. RECOMMENDATIONS


1. Dismiss the complaint against all Respondents;
2. Approve the appropriate letters;
3. Close the file.

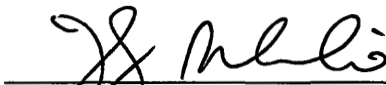
Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel for Enforcement

4/4/2006
Date

By:


Ann Marie Terzaken
Assistant General Counsel


Zachary H. Mahshie
Attorney

³ The complaint does not allege that Gordon informed Kerry for President that Gordon believed the committee violated the contract or that it intended to seek money from the committee as a result. Thus, there is insufficient information for this Office to make a recommendation on whether the Respondents violated 2 U.S.C. § 434(b) and 11 C.F.R. § 116.10 for failing to report a disputed debt.

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