

JUN 14 2010

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

FIRST GENERAL COUNSEL'S REPORT

MUR: 6246

DATE COMPLAINT FILED: January 5, 2010

DATE OF NOTIFICATION: January 8, 2010

DATE OF LAST RESPONSE: April 30, 2010

DATE ACTIVATED: March 16, 2010

EXPIRATION OF SOL: Earliest October 21, 2013
Lateat October 27, 2013

COMPLAINANT:

Kjelden Cundiff

RESPONDENTS:

Charles C. Brennan
Dollar Loan Center, LLC
Robert Brennan
Judi Brennan
Bruce Cooley
Carla Cooley
Porter for Congress and Chrissie Hastie,
in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441f
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint alleges that Charles C. Brennan, CEO of Dollar Loan Center, LLC ("Dollar Loan Center"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using either personal or Dollar Loan Center funds to reimburse

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1 certain federal campaign contributions. Specifically, it is alleged that Brennan reimbursed
2 Robert and Judi Brennan and Bruce and Carla Cooley \$9,200 (\$2,300 each) for their
3 contributions to Porter for Congress (the "Committee"), the principal campaign committee of Jon
4 C. Porter, Sr., in the 2008 election for United States Representative from Nevada's 3rd
5 Congressional District. *See* 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b).

6 In a response to the complaint, each of the alleged conduits acknowledges making a
7 \$2,300 contribution to the Committee, but denies in sworn affidavits that Brennan or Dollar Loan
8 Center reimbursed these contributions. Similarly, Charles Brennan denies in a sworn affidavit
9 that he offered to reimburse any individual with either personal or Dollar Center funds for a
10 campaign contribution to the Committee.¹ In addition, counsel for Dollar Loan Center states that
11 his firm conducted an investigation into the alleged violations to the Act and found no
12 information to suggest Brennan or Dollar Loan Center reimbursed the complainant or any other
13 individual for contributions to the Committee. Each Respondent asks that the Commission take
14 no action in this matter.

15 Based on available information, and for the reasons set forth below, we recommend that
16 the Commission: (1) find no reason to believe that Charles Brennan and Dollar Loan Center,
17 LLC, violated 2 U.S.C. §§ 441f, 441a(a), or 441b(a) by making contributions in the names of
18 others or by making excessive or prohibited contributions to Porter for Congress; (2) find no
19 reason to believe that Robert Brennan, Judi Brennan, Bruce Cooley, and Carla Cooley violated
20 2 U.S.C. § 441f by knowingly permitting Charles Brennan to make contributions in their name to
21 Porter for Congress; (3) find no reason to believe that Porter for Congress and Chrissie Hastie, in

¹ In a supplemental affidavit, Brennan denies reimbursing the complainant for any contribution to the Committee, but does not address whether he reimbursed the other individuals he solicited for contributions. The other affidavits, however, state that no reimbursements were received for the contributions to the Committee.

her official capacity as treasurer, violated 2 U.S.C. §§ 441f, 441a(f), or 441b(a) by knowingly accepting contributions in the names of others or knowingly accepting excessive or prohibited contributions; and (4) close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The complainant is a former employee of Dollar Loan Center where he was the company's National Director of Compliance. He claims that in October 2008, while employed by Dollar Loan Center, his supervisor, Charles Brennan, called him and asked that he and his wife each contribute \$2,300 to the Porter for Congress Committee. The contributions were to coincide with a visit by candidate Porter to the Dollar Loan Center stores. Brennan allegedly offered to reimburse the complainant and his wife with cash for the contributions, and also indicated that other individuals, including Brennan's parents, "were doing it as well." The complainant states that he told Brennan that he was not sure of the legality of the request, and asked if he could instead draw a check from the corporate account for the contributions. According to the complainant, Brennan explained that there is a "maximum amount that could be donated by an individual" and that "writing a check from the Dollar Loan Center operating account was not an option." The complainant says that when he refused to make the contributions, Brennan became agitated and stated that he would "get somebody else to do it."

Although the complainant did not participate in the alleged reimbursement scheme, he speculates that Brennan may have reimbursed his parents, Robert and Judi Brennan, as well as Bruce Cooley, the president of Dollar Loan Center, and his wife, Carla Cooley, for contributions

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1 they made to the Committee on October 21 and 27, 2008.² The complainant infers that Charles
2 Brennan reimbursed these four individuals because Brennan had offered the complainant a
3 reimbursement for a contribution to the Committee during the same time period that the
4 individuals made their contributions, and because Brennan had told him that his parents and
5 other individuals "were doing it as well." In addition, the complainant questions whether the
6 alleged conduits would have contributed to the Committee absent a reimbursement because none
7 of the four individuals had ever before contributed to a federal political committee and each gave
8 the maximum individual contribution of \$2,300 to the Committee. The complainant also deemed
9 suspicious the fact that Bruce and Carla Cooley reside in South Dakota, outside of the candidate's
10 Congressional district located in Nevada. Finally, the complainant states that the Committee's
11 disclosure reports incorrectly name Robert and Judi Brennan as owners of Dollar Loan Center.³

12 In responses to the complaint, submitted on February 22, 2010, and supplemented on
13 April 30, 2010 in response to a request for clarification, counsel for Charles Brennan, Dollar
14 Loan Center, and the alleged conduits claims that the allegations are speculative, and likely the
15

² The complainant learned of the contributions by reviewing Committee disclosure reports filed with the Commission. Our own review of the Committee's disclosure reports reveals that no other contributor to the Committee identified as being a Dollar Loan Center employee.

³ In its 2008 Post-General Election Report, the Committee notes that employer information for Robert and Judi Brennan was "requested." In an amendment to that report filed in January 2009, the employer is listed as "Dollar Loan - owner" even though Brennan's parents do not own and are not employed by Dollar Loan Center. The Committee does not address this apparent mistake in its response to the complaint. Although it appears that there was an incorrect disclosure of the occupation of contributors it would not be a prudent use of Commission resources to pursue this disclosure issue for contributions that total \$4,600.

1 retaliatory action of a disgruntled former employee.⁴ Counsel explains that Charles Brennan has
2 a history of financially supporting candidates aligned with his business interests, and that not
3 only did Brennan himself make the maximum allowable contribution to Porter's Committee, he
4 also encouraged his family, friends, and business partners to contribute to the Committee if they
5 had the financial ability to do so. Brennan admits that he asked the complainant to contribute to
6 the Committee, but denies that he offered to reimburse the complainant with either personal or
7 Dollar Loan Center funds.⁵

8 Counsel also states in his original response that his firm conducted an internal
9 investigation into the allegations and concluded that neither Brennan nor Dollar Loan Center
10 reimbursed the conduits. In the supplemental response, which was submitted in response to a
11 request for clarification, counsel stated that the investigation included interviews with Charles
12 Brennan and the alleged conduits, as well as a review of relevant business documents and
13 records.⁶

⁴ Respondents claim that after the complainant resigned from Dollar Loan Center in October 2009, he attempted to extort money from Brennan, and began filing "complaints against the company with various institutions, including MUR 6246 with the FEC." Respondents did not specify the types of complaints, and this Office could find no publicly available information regarding complaints filed with any other agency or institution. The Clark County, Nevada case search system reveals no pending action involving the complainant and Charles Brennan or Dollar Loan Center LLC except for an order of protection obtained by Dollar Loan Center LLC against the complainant on November 19, 2009. The records related to this action have been sealed by the Clark County, Nevada, District Court.

⁵ The response also addressed the complainant's claim that the contributions made by Bruce and Carla Cooley are suspicious by virtue of the fact that the Cooleys are not residents of Nevada, stating that Federal candidates often solicit and receive contributions from outside of the relevant district, and that such contributions are not in violation of the Act.

⁶ Counsel noted that they conducted a review of "relevant, but confidential, business documents and records to assist in their investigation." He did not specifically identify the business documents and records reviewed during the course of his investigation or indicate whether they reviewed the financial records of Dollar Loan Center or those of Brennan and the individuals he solicited. He states that he took guidance from "Recommended Practices for Companies and Counsel." This Office reviewed the document, approved by the Board of Regents, American College of Trial Lawyers, in February 2008. The document offers guidance on organizing and conducting investigations into business practices, including organizational strategies, choosing relevant documents, interviewing witnesses, and building a record of the investigation.

1 The original response included sworn affidavits from the alleged conduits stating that
2 they had not been "offered reimbursement" for their contributions to the Committee. In response
3 to the request for clarification, the conduits filed supplemental affidavits stating that not only had
4 they not been "offered reimbursement" for the contributions, but also that they did not "receive"
5 advance payment or reimbursement for their contributions to the Committee from any person or
6 entity. In his own original sworn affidavit, Charles Brennan attests that he did not offer any
7 individual reimbursement for contributions to the Committee. In a supplemental affidavit,
8 Brennan denies reimbursing the complainant for any contribution to the Committee. Further,
9 counsel states that "to be clear, based upon our interviews and reflected in the affidavits, no
10 payments were offered, made or received in connection to a donation to Mr. Porter's
11 congressional campaign."

12 **B. Contributions in the Name of Another**

13 The Act prohibits any person from making or accepting a contribution in the name of
14 another person. *See* 2 U.S.C. § 441f.⁷ Likewise, persons are prohibited from knowingly
15 permitting their names to be used to effect contributions made in the name of another person and

⁷ The events at issue in this matter falls within the jurisdiction of U.S. Court of Appeals for the Ninth Circuit, where the relevant provision of the Act, 2 U.S.C. § 441f, is currently the subject of ongoing litigation. On June 8, 2009, a federal judge in the Central District of California dismissed two counts of a criminal indictment alleging that Pierce O'Donnell violated 2 U.S.C. § 441f by reimbursing conduit contributions to the 2004 presidential campaign of Sen. John Edwards, ruling in part that section 441f did not apply to indirect contributions made through a conduit or intermediary. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. The district court decision is not controlling precedent and section 441f remains enforceable in the Ninth Circuit.

The legal conclusion in O'Donnell regarding section 441f rests on a misunderstanding of the applicable law and is inconsistent with authority in various federal circuits. *See Mariani v. United States*, 212 F.3d 761, 766 (3d Cir. 2000) (describing section 441f as "the conduit contribution ban or 'anti-conduit' provision"); *U.S. v. Sun Diamond Growers*, 138 F.3d 961, 971 (D.C. Cir. 1998) (holding that a corporation is liable for the reimbursements made by a corporate officer, in violation of 441f). *See also U.S. v. Boender*, No. 09 CR 186-01 (N.D. Ill. Feb. 24, 2010) (finding a violation of 441f and disagreeing with the district court's ruling in O'Donnell); *FEC v. Weinstein*, 462 F. Supp. 243, 250 (S.D.N.Y. 1978) (rejecting the argument that section 441f was unconstitutionally vague as applied to the reimbursement of conduits and stating, "the court finds no ambiguity in the statutory language"). Accordingly, the United States appealed to the United States Court of Appeals for the Ninth Circuit to reverse the dismissal and the Commission filed an amicus brief in the matter. *U.S. v. Pierce O'Donnell*, Case 09-50296, (December 9, 2009).

1 from knowingly assisting in making such contributions. *See id.*; 11 C.F.R. § 110.4(b)(1)(iii).

2 The Act also makes it unlawful for any candidate, political committee, or other person to
3 knowingly accept or receive a contribution in the name of another. 2 U.S.C. § 441f.

4 In addition to potential liability for making contributions in the name of another, if
5 Brennan used Dollar Loan Center funds to reimburse the contributions, Brennan and the Dollar
6 Loan Center would have violated the Act's prohibition on corporate contributions or
7 alternatively, the Act's contribution limitations. *See* 2 U.S.C. §§ 441b(a) and 441a.⁸
8 Corporations are prohibited from making contributions from their general treasury funds in
9 connection with any election of any candidate for federal office, and candidates are similarly
10 prohibited from knowingly accepting such contributions. *See* 2 U.S.C. § 441b(a). The Act also
11 prohibits any officer or director of any corporation from consenting to any contribution by the
12 corporation. *See id.* In the alternative, if Brennan used personal funds to reimburse conduits for
13 contributions, he would be liable for making excessive contributions to the Committee, in
14 violation of 2 U.S.C. § 441a. The Act also prohibits any candidate or political committee from
15 knowingly accepting any contribution in violation of the contribution limits set forth in section
16 441a of the Act. 2 U.S.C. §§ 441a(f).

17 The complaint's allegation in this matter that Brennan "appears" to have reimbursed
18 contributions to Porter for Congress is premised on the assertions that (1) Brennan solicited the
19 complainant for a contribution to Porter for Congress and offered to reimburse the complainant
20 in cash if he would make the contribution, and that (2) Brennan stated that "his mom and dad and

⁸ As a limited liability company, Dollar Loan Center is subject to the prohibition against corporate contributions or the Act's contributions limitations, depending on whether it elects to be treated as a partnership or corporation by the Internal Revenue Service. 11 C.F.R. § 110.1(g). If treated as a partnership, and if it reimbursed the alleged conduit contributions in excess of \$2,300, it is possible that Dollar Loan Center made an excessive contribution to the Committee in violation of 2 U.S.C. § 441a. 11 C.F.R. § 110.1(e). If Dollar Loan Center elected tax treatment as a corporation, it may have made a corporate contribution in violation of 2 U.S.C. § 441b(a).

1 a bunch of other people were doing it as well." The complaint offers no information or firsthand
2 knowledge regarding whether the alleged reimbursements to the Brennans and the Cooeys
3 actually occurred, except to note that the Brennans and the Cooeys made contributions to Porter
4 for Congress at or about the same time that Brennan solicited the complainant, each made the
5 maximum individual contribution of \$2,300 to the Committee, none had ever before contributed
6 to a federal political committee, and the Cooeys reside in South Dakota, outside the candidate's
7 Congressional district located in Nevada.

8 The responses and affidavits, on the other hand, are very specific that the Brennans and
9 the Cooeys did not receive reimbursements or advance payments from Brennan or Dollar Loan
10 Center for their contributions. Although it is unclear whether the internal investigation
11 conducted by counsel included a review of both the financial records of the Dollar Loan Center
12 and Brennan's personal financial records, *see supra* n. 6, counsel has represented that they
13 reviewed relevant records and interviewed Brennan and each of the alleged conduits and
14 determined that there was no evidence of any advance payments or reimbursements, and the
15 conduits state in sworn affidavits that they did not receive an advance payment or reimbursement
16 from Brennan, Dollar Loan Center, or any other person or entity. We have no information to the
17 contrary. Further, the complaint is not entirely clear on exactly what Brennan allegedly told the
18 complainant. As described in the complaint, Brennan's alleged statement that his parents and
19 other individuals "were doing it as well" is ambiguous in that the statement could mean that the
20 others would be making contributions or, as the complainant appears to have interpreted the

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statement, it could mean that the others would be making contributions and receiving reimbursements from Brennan.⁹

Although the circumstances in this matter raise questions as to whether reimbursements of the contributions occurred, in light of (1) the lack of specific information in the complaint that, if true, would support the inference that the alleged reimbursements, in fact, occurred, (2) the sworn denials, and (3) the representations of counsel regarding the results of their internal investigation, we recommend that the Commission find no reason to believe that Charles Brennan and Dollar Loan Center, LLC, violated 2 U.S.C. §§ 441f, 441a(a), or 441b(a) by making contributions in the names of others or by making excessive or prohibited contributions to Porter for Congress, and find no reason to believe that Robert Brennan, Judi Brennan, Bruce Cooley, and Carla Cooley violated 2 U.S.C. § 441f by knowingly permitting Charles Brennan to make contributions in their name to Porter for Congress. We also recommend that the Commission find no reason to believe that Porter for Congress and Chrissie Hastie, in her official capacity as treasurer, violated 2 U.S.C. §§ 441f, 441a(f) or 441b(a) by knowingly accepting contributions in the name of others or knowingly accepting excessive or prohibited contributions.

III. RECOMMENDATIONS

1. Find no reason to believe that Charles C. Brennan and Dollar Loan Center, LLC, violated 2 U.S.C. §§ 441f, 441a(a) or 441b(a);
2. Find no reason to believe that Robert Brennan, Judi Brennan, Bruce Cooley or Carla Cooley violated 2 U.S.C. § 441f;

⁹ Cf. MUR 5504 (Karoly). In MUR 5504, the Commission made reason to believe findings, authorized an investigation into the alleged reimbursement scheme, and ultimately entered into a conciliation agreement with the respondents even though all of the alleged conduits but one submitted identical affidavits claiming they had not been reimbursed for the contributions. The complainant offered what appeared to be firsthand knowledge of the violations, claiming to have witnessed a reimbursement made to an employee and to have seen company checks made out to alleged conduits, and claiming that one of the alleged conduits, who had not submitted an affidavit, had admitted to him that her contribution was reimbursed.

3. Find no reason to believe that Porter for Congress and Chrissie Hastie, in her official capacity as treasurer, violated 2 U.S.C. §§ 441f, 441a(f), or 441b(a);
4. Approve the attached Factual and Legal Analysis; and
5. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

Date

6/14/10

BY:


Ann Marie Terzaken
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