

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6364) CASE CLOSURE UNDER THE
6 STEVEN M. PALAZZO) ENFORCEMENT PRIORITY
7 PALAZZO FOR CONGRESS) SYSTEM
8 AND PAUL V. BREAZEALE,)
9 IN HIS OFFICIAL CAPACITY)
10 AS TREASURER)
11 EDNA SCOGGINS)
12 LEE D. HERTZ)
13 FRANK S. PALAZZO)
14 WELLS GRIFFITH)
15
16

17 **GENERAL COUNSEL'S REPORT**

18 Under the Enforcement Priority System ("EPS"), the Commission uses formal
19 scoring criteria to allocate its resources and decide which cases to pursue. These criteria
20 include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both
21 with respect to the type of activity and the amount in violation, (2) the apparent impact the
22 alleged violation may have had on the electoral process, (3) the legal complexity of issues
23 raised in the case, (4) recent trends in potential violations of the Act, and (5) development of
24 the law with respect to certain subject matters. It is the Commission's policy not to pursue
25 certain matters where the allegations lack sufficient substantiation to support further
26 enforcement action. The Office of General Counsel has assessed MUR 6364 using the EPS
27 criteria and has determined that it should not be referred to the Alternative Dispute
28 Resolution Office. Furthermore, in light of the largely unsupported allegations in the
29 complaint and supplement, this Office recommends that the Commission exercise its
30 prosecutorial discretion to dismiss MUR 6364.

1 In this matter, the complaint, filed by Richard W. Keefer, alleges that Steven Palazzo¹
2 and Palazzo for Congress and Paul Breazeale, as treasurer ("the Committee"), received
3 contributions in the name of another when Palazzo's father, Frank Palazzo, and his mother
4 in-law, Edna Scoggins, provided funds to friends and relatives to donate to Palazzo's
5 campaign.

6 More specifically, the complaint alleges that a relative of Palazzo's, Lee D. Hertz,
7 made a contribution in the name of another using Frank Palazzo's funds and told a co-worker
8 about it.² The complaint next alleges that the Palazzo campaign may have received excessive
9 contributions from Palazzo's mother-in-law. This allegation appears to be based on
10 statements made at a so-called "Meet-n-Greet" event during which Palazzo's campaign
11 manager, Wells Griffith, was asked why the "'Republican Party' had given Steven Palazzo
12 \$125k" and an audience member named Michael Shotwell stated that the Republican Party
13 had not given the candidate the money, but rather the money had come from the candidate's
14 mother-in-law. The complaint indicates that "[o]thers have made similar statements," but
15 does not provide any detail as to the identity of these individuals or statements from
16 Mr. Shotwell or others in support of the allegations.

17 In a supplement to the complaint, the complainant identifies contributions that he
18 believes may be in violation of the Federal Election Campaign Act of 1971, as amended ("the
19 Act"), based on the amount, nature, and timing of the contributions. The complainant states
20 that the allegations are also based on witness interviews, but does not name any of the
21 witnesses or provide any of their statements. Additionally, the supplement reiterates the

¹ On November 2, 2010, Steven Palazzo was elected to represent Mississippi's Fourth Congressional District.

² A statement from that co-worker was not provided with the complaint.

1 allegations concerning possible excessive contributions made by Edna Scoggins. The
2 supplement also adds that Michael Shotwell was a Palazzo campaign aide and surmises that
3 Scoggins may have “funneled” funds into the Palazzo campaign by providing money for
4 others to contribute in their names. The supplement lists names of contributors who are also
5 relatives of Scoggins and who “would not, normally, be in the financial position to make
6 very large donations to anyone’s campaign.”³

7 The second allegation in the supplement reiterates the original allegations concerning
8 contributions in the name of another involving Frank Palazzo and Lee Hertz. The
9 supplement includes a list of six additional contributions that, based on the contributor’s
10 occupation, and the timing and amount of the contribution, may have been funded by Frank
11 Palazzo. An individual associated with one of the contributions labeled as “Commercial Real
12 Estate Advisors, LLC,” also appears to have contributed in his personal capacity.
13 Specifically, it appears that as a managing member of the limited liability company, on
14 March 11, 2010, D. Brooks Holstein contributed \$2,400 to the Committee for the primary
15 election and on the same day as an individual he also contributed \$4,800 to the Committee
16 for both the primary and general elections.

17 Finally, the supplement identifies three contributions that based on “their amount,
18 nature, timing and other information strongly suggest that the contributions may be suspect.”
19 One of these contributions was made by an individual who, according to the complaint,
20 “could not afford to pay [her] property taxes” and whose home was sold at a tax sale three
21 months after she contributed to the Palazzo campaign. The other two contributions of

³ The supplement lists contributions made by Scoggins’ sisters, daughters, nephew, and granddaughter, describing them as suspicious based on the contributors’ connections to Edna Scoggins.

1 \$2,400, each made on March 29, 2010, have a connection to the same individual, Misty
2 Rustin. Specifically, one contribution was made in her personal capacity and the other was
3 made in the name of her business, Misty's House of Style.⁴

4 The Committee's response denies that it received contributions in the name of
5 another. The Committee's treasurer explained that he reviewed all contributions to ensure
6 their legality and that he never considered any of the contributions identified in the complaint
7 to be questionable. Following the receipt of the complaint, the Committee obtained
8 affidavits from thirteen individuals listed in the complaint, including Lee Hertz, Frank
9 Palazzo, and Edna Scoggins, verifying that their contributions were not made in the name of
10 another person. Those affidavits, which were provided to the Commission, along with the
11 Committee's response to the complaint, are identical and state that "[t]his will confirm that
12 the contribution detailed by my name . . . was made by me and is not a contribution made by
13 one person in the name of another as the complaint alleges." Although the Committee's
14 initial response did not specifically address the allegation that either Edna Scoggins or Frank
15 Palazzo may have provided funds to other individuals who made federal contributions, its
16 response to the supplemental complaint directly addressed the issue.

17 In its response to the supplemental complaint, the Committee's treasurer, Paul
18 Breazeale, provided affidavits from Edna Scoggins and Frank Palazzo stating that they did
19 not give money to others to make contributions to the campaign. More specifically, each of
20 the affiants states that, "this will confirm that, as a person who contributed up to the limit to
21 the campaign, I did not give money to another person(s) to make contributions(s) to the
22 campaign."

⁴ Both contributions were made on the same day, for the same amount, from the same address, and were designated for the primary election.

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1 For the 2010 election cycle an individual's contribution was limited to \$2,400 per
2 calendar year to a candidate and his authorized political committee with respect to any
3 election for Federal office. *See* 2 U.S.C. § 441a(a)(1)(A). The Act prohibits any person from
4 making a contribution in the name of another person, knowingly permitting his or her name
5 to be used to effect such a contribution, and from knowingly accepting a contribution made
6 by one person in the name of another person. 2 U.S.C. § 441f. The Commission's
7 regulations further prohibit knowingly helping or assisting any person in making a
8 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

9 The allegations against the respondents concerning contributions in the name of
10 another are not fully supported. While the complaint identifies two individuals who may
11 have knowledge of the alleged contributions in the name of another, it does not provide
12 information or statements from those individuals. Some of the contributors listed in the
13 complaint have provided affidavits denying that their contributions were made in the name of
14 another. Additionally, the alleged facilitators of the contribution scheme, Edna Scoggins and
15 Frank Palazzo, have each averred that they did not provide money to others in order to make
16 contributions to the Palazzo campaign.

17 The complaint also raises questions over contributions made by Misty Rustin and her
18 business entity, Misty's House of Style. There is insufficient information available in the
19 complaint or on the public record to determine the business classification of Misty's House
20 of Style (*i.e.*, sole proprietorship or partnership), except that it appears that the entity is not
21 incorporated.⁵ Regardless of how the business is organized, the public record reflects that

⁵ This Office ran a Dun & Bradstreet report and found that the entity is owned solely by Misty Rustin. Furthermore, there is no record of a public filing for Misty's House of Style in the state of Mississippi.

1 Ms. Rustin had contributed the maximum amount permissible to the Palazzo campaign for
2 the primary election and, therefore, it is possible that the contribution of \$2,400 made by
3 Misty's House of Style was an excessive contribution in violation of 2 U.S.C. § 441a(a)(1).
4 Thus, the Committee may have accepted an excessive contribution, which may require a
5 refund, reattribution, or redesignation under 11 C.F.R. § 103.3(b).

6 The complaint also points to a contribution from Commercial Real Estate Advisors,
7 LLC.⁶ Although there is no apparent connection between the contribution and Frank
8 Palazzo, there is an indication that the contributor may have exceeded the maximum amount
9 permissible for the election cycle. Specifically, D. Brooks Holstein is a managing member of
10 Commercial Real Estate Advisors, LLC and on March 11, 2010, his company contributed
11 \$2,400 to the Committee for the primary election and on the same day he personally
12 contributed \$4,800 to the Committee for both the primary and general elections. Therefore,
13 it is possible that Mr. Holstein made an excessive contribution in violation of 2 U.S.C.
14 § 441a(a)(1). Thus, the Committee may have accepted an excessive contribution, which may
15 require a refund, reattribution, or redesignation under 11 C.F.R. § 103.3(b).

16 We note that Misty Rustin and D. Brooks Holstein were not notified as respondents in
17 the matter. Although these individuals were initially identified by the complainant, in a
18 supplement to the complaint, as being involved in making contributions in the name of
19 another, the allegations were based on the timing of their contributions, their occupations,
20 and contribution amounts, rather than any empirical evidence. Thus, the allegations appeared

⁶ To avoid situations where recipient committees might inadvertently accept illegal contributions from LLCs that have elected to be taxed as corporations, the Commission has provided that these companies must inform recipient committees as to whether they are legally allowed to make contributions, see 11 C.F.R. § 110.1(g)(5). We have no indication from either the complaint or public record as to the type of tax treatment the company selected (*i.e.*, corporate or partnership). Nonetheless, for purposes of our analysis in this case, we have assumed the entity chose to be taxed as a partnership and, therefore, a certain amount of the contribution at issue may be attributable to the managing member, Mr. Holstein.

1 conclusory and were deemed to be too tenuous to require a complaint notification. However,
2 in light of the fact that Ms. Rustin and Mr. Holstein may have made excessive contributions
3 through their associated entities, we recommend that the Committee receive a reminder
4 concerning the potential acceptance of excessive contributions and note that it may have an
5 obligation to make a further inquiry as to whether the contributions discussed herein violated
6 the Act.

7 On balance, the allegations contained in the complaint and supplement concerning
8 contributions that were made in the name of another are not sufficient to overcome the
9 respondents' affidavits, which directly deny any conduit contribution scheme took place.
10 Therefore, this Office believes that no further inquiry into these potential violations is
11 warranted. Moreover, in light of the relatively low dollar amounts involved concerning the
12 potentially excessive contributions made by Misty Rustin and D. Brooks Holstein, this Office
13 believes that further action is unnecessary. Accordingly, under EPS, and in furtherance of
14 the Commission's priorities as discussed above, the Office of General Counsel believes that
15 the Commission should exercise its prosecutorial discretion and dismiss this matter.
16 Additionally, this Office recommends that the Commission remind Palazzo for Congress and
17 Paul Breazeale, in his official capacity as treasurer, of the provisions concerning the receipt
18 of potentially excessive contributions under 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 103.3(b).


RECOMMENDATIONS

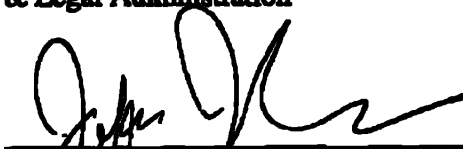
The Office of General Counsel recommends that the Commission dismiss MUR 6364, close the file, and approve the appropriate letters. In addition, this Office recommends that the Commission remind Palazzo for Congress and Paul Breazeale, in his official capacity as treasurer, of the provisions concerning the receipt of excessive contributions and 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 103.3(b).

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4/21/11
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