



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Case Number ADR 224

Source AO 03-27

Case Name TN Republican Party  
Federal Election Acct

### **NEGOTIATED SETTLEMENT**

This matter was initiated by the Federal Election Commission ("the Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Following a review of the record and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended ("the FECA"), and to resolve this matter, the Commission entered into negotiations with Paul Ney, Esq. representing the Tennessee Republican Party Federal Election Account and Joe Arnold, Treasurer (the "Respondents" or "Committee"). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and the Respondents have addressed all the issues raised in this matter. The parties have agreed to resolve the matter according to the following terms:

1. The Commission has entered into this agreement as part of its responsibility for administering the Federal Election Campaign Act and in an effort to promote compliance with the FECA on the part of the Respondents. The Commission's use of ADR procedures is authorized in "The Administrative Dispute Resolution Act of 1996", 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. The Respondents have voluntarily entered into this agreement with the Commission.
3. An audit of the Committee, covering the period from January 1, 2001 through December 31, 2002, disclosed that Respondents received a number of contributions that exceeded federal contribution limits. Specifically, Respondents received contributions from twenty individuals, three Political Action Committees, and one authorized committee that exceeded federal contribution limits by \$300,850, \$8,500 and \$1,000 respectively. The Committee deposited individual contributor checks exceeding the federal contribution limit into the federal account. The intent of the Committee was to split the contributions between the federal and a nonfederal account and transfer the nonfederal portion to a nonfederal account. But the Committee did not make those transfers. In addition, Respondents received and erroneously deposited into its Federal account a contribution of \$25,000 that had been earmarked to a nonfederal account of the Committee; the Committee thus received and deposited a contribution from a prohibited source.
4. No person shall make contributions to any other political committee in any calendar year, which, in the aggregate exceed \$5,000. 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. §§ 110.1(d) and 110.9.

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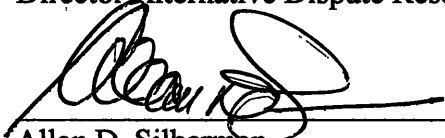
5. Contributions which on their face exceed the contribution limitations set forth in 11 C.F.R. §§ 110.1 or 110.2 and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in 11 C.F.R. §§ 110.1 or 110.2 when aggregated with other contributions from the same contributor ... may be either deposited into a campaign depository under 11 C.F. § 103.3 (a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 C.F.R. §§ 110.1(b), 110.1(k) or 110.2(b), as appropriate. If the redesignation or reattribution is not obtained, the treasurer shall within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3)
6. Any contribution which appears to be illegal under 11 C.F.R. §§ 103.3(b)(1) or (3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. 11 C.F.R. § 103.3(b)(4).
7. If a contribution which appears to be illegal under 11 C.F.R. §§ 103.3(b)(1) or (3) is deposited in a campaign depository, the treasurer shall make and retain a written record noting the basis for the appearance of illegality. A statement noting that the legality of the contribution is in question shall be included in the report noting the receipt of the contribution. If a contribution is refunded to the contributor because it cannot be determined to be legal, the treasurer shall note the refund on the report covering the reporting period in which the refund is made. 11 C.F.R. § 103.3(b)(5).
8. Any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. If a contribution to a political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 C.F.R. §§ 110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. §§ 110.1(k)(1), (2) and (3).
9. Each organization, including a State, district or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 C.F.R. § 100.5 shall either: (a) establish a separate Federal account in a depository in accordance with 11 C.F.R. part 103 ... Such account shall be treated as a separate Federal political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 C.F.R. parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account; or (b) establish a political committee that shall receive only contributions subject to the prohibitions and limitations of the Act ... 11 C.F.R. § 102.5(a)(1)(i) and (ii).

10. Respondents acknowledge receiving and depositing contributions that exceeded the statutory limits of the Act. Respondents noted a number of internal procedural changes made after learning that some contributions had been illegally deposited in the Committee's Federal account. They explained that the Committee's newly elected leadership had established a position of controller to monitor the Committee's financial activity and hired a new firm to track and record contributions. Respondents also note that the new Treasurer, who was not in office at the time the subject matters arose, is committed to rectifying the problems that led to depositing illegal excessive contributions.
11. Respondents maintain that they fully cooperated with the Commission during its audit and that they complied with all of the recommendations of the Commission's audit staff. In an effort to resolve these matters, avoid similar problems in the future, and convey their intent to comply with the FECA and cooperate with the Commission, the Committee agrees to: 1) prepare and maintain a procedural manual to provide guidance to the Committee's staff in complying with the requirements of the FECA; 2) forward to the Commission copies (both fronts and backs) of paid cancelled checks of the subject refunded contributions; 3) disgorge to the US Treasury those contributions not refunded or returned to contributors; 4) select a minimum of two staff members or officer to attend, within eighteen months of the effective date of this agreement, a FEC seminar on Federal election campaign reporting requirements; and 5) pay a civil penalty of \$30,000.
12. Respondents agree that all information provided to resolve this matter is true and accurate to the best of their knowledge and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
13. The parties agree that if the Respondents fail to comply with the terms of this settlement, the Commission may undertake civil action in the U.S. District Court for the District of Columbia to secure compliance and/or forward any outstanding civil penalty to the US Treasury for collection.
14. This agreement will become effective on the date signed by all the parties and approved by the Commission. Respondents shall comply with the terms of settlement listed in paragraph eleven (11) above within thirty (30) days of the effective date of this agreement except for item one (1), which shall be implemented within sixty (60) days, item four (4) which Respondents will comply with within eighteen (18) months and item five (5) which shall be made in installments within twenty-four (24) months of the effective date of this agreement.
15. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 224/ AR 03-27 and effectively resolves this matter. No other statement, promise or agreement, either written or oral, made by either party, not included in herein, shall be enforceable.

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FOR THE COMMISSION:

Allan D. Silberman,  
Director Alternative Dispute Resolution Office

  
Allan D. Silberman

May 26, 2005  
Date

FOR THE RESPONDENTS:

  
Paul Ney, Esq. on behalf of the Tennessee  
Republican Party Federal Election Account  
and Treasurer

5/16/05  
Date

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