



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 25, 2009

FACSIMILE & FIRST CLASS MAIL

Marc E. Elias, Esq.
Perkins Coie
607 Fourteenth Street NW
Washington, DC 20005-2011

RE: MUR 5849
Kathleen Cannon

Dear Mr. Elias:

On September 23, 2009, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of violations of 2 U.S.C. §§ 441a(b) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Marianne Abely" followed by a stylized monogram or initials.

Marianne Abely
Attorney

Enclosure
Conciliation Agreement

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2009 AUG 17 PM 3:23

BEFORE THE FEDERAL ELECTION COMMISSION
2009 AUG 17 PM 3:21

In the Matter of)
 OFFICE OF GENERAL) MUR 5849
Kathleen Cannon)
 COUNSEL)
))

CONCILIATION AGREEMENT

This matter was initiated pursuant to information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. §§ 437g(a)(2). An investigation was conducted, and the Commission found probable cause to believe that Kathleen Cannon ("Respondent") knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437(g)(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding.
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 - 1. Respondent was employed by the Bank of America Corporation ("the Bank") for approximately twenty-nine years in a variety of capacities. During the relevant time period, Respondent served as the Senior Vice President in charge of the Bank's Student Banking Division and directly supervised eight managers.

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2. The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits any person from making a contribution in the name of another person. 2 U.S.C. § 441f. In addition, the Commission's regulations provide that no person may knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

3. Corporations and national banks are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for Federal office. 2 U.S.C. § 441b(a). Corporate officers are prohibited from consenting to contributions made by the corporation or national bank. *Id.*

4 Respondent began soliciting contributions from Bank employees in 1999, after being informed by staff of Representative Howard P. "Buck" McKeon that she could not use a corporate check to pay for a table at a fundraising event for McKeon's principal campaign committee, McKeon for Congress ("McKeon Committee"). Instead of using a Bank check to cover the cost of the table at the McKeon fundraiser, Cannon made a \$1,000 individual contribution to the McKeon committee and requested that one of her subordinate managers in the Student Banking Division make a personal contribution to the McKeon committee. The Commission concluded that Respondent authorized the reimbursement of the manager's \$500 contribution.

5. On or about December 2001, two Student Banking Division managers made contributions of \$250 each to Tim Johnson for South Dakota, Inc. The Commission concluded that with Respondent's authorization, each manager was reimbursed with Bank funds for his contribution to Tim Johnson for South Dakota, Inc.

6 In April of 2002, a Student Banking Division manager made a contribution of \$1,000 in order to participate in a golf outing benefiting the McKeon Committee. The

Commission concluded that Respondent instructed the manager to obtain a receipt for the fundraising event, which the manager submitted with a request for reimbursement. The Commission also concluded that Respondent authorized the request and the manager was reimbursed by the Bank for his contribution.

7. On October 18, 2002, two of Respondent's subordinate managers in the Student Banking Division contributed \$500 to McKeon for Congress. The Commission concluded that Respondent authorized each manager's request for reimbursement of these contributions, which the Bank duly issued.

8. On November 3, 2003, Respondent sent an email to eighteen Bank employees, including seven of Respondent's subordinate managers in the Student Banking Division soliciting contributions. In response to an e-mail query from one of Respondent's subordinate managers regarding the cost of attending the McKeon committee fundraising dinner, Respondent wrote, in part, "you can expense it." In total, six of Respondent's subordinate managers each contributed \$400 to the McKeon committee. The Commission concluded that the six managers requested, and with Respondent's authorization, were reimbursed for these contributions with Bank funds.

9. In December 2003, two Student Banking Division managers each made a \$250 contribution to Earl Pomeroy for Congress during the course of an industry conference. The Commission concluded that one of these managers requested and, with Respondent's authorization, was reimbursed for this contribution with Bank funds.

10. On February 20, 2004, Respondent sent eight of her subordinate managers in the Student Banking Division an e-mail solicitation for a McKeon committee fundraising event. The e-mail message stated, in part, "I need two checks for \$150 for a McKeon fundraiser (hopefully

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two people that did not write one before). I will show you how to expense it so you will not be out of pocket. Thanks.” Two of these managers contributed \$150 in response to Respondent’s e-mail solicitation and both of these managers requested reimbursement for their contribution. The Commission concluded that, with Respondent’s authorization, both of these managers were reimbursed for their contributions with Bank funds.

11. On June 11, 2004, Respondent sent e-mail solicitation inviting her subordinate managers as well as eighteen other Student Banking Division employees to a July 9, 2004, fundraising dinner to benefit the McKeon Committee. After providing details regarding the event, the e-mail stated, in part, “[t]he tickets can not be expensed as it is a contribution.” The Commission concluded that Respondent informed one of her subordinate managers in a telephone conversation that she could expense the contribution. Three managers each contributed \$300 to McKeon for Congress and one manager contributed \$600 to the committee. Two managers submitted requests for reimbursements, which the Commission concluded, Respondent approved. Both managers were reimbursed for their contributions with Bank funds.

12. Respondent verbally solicited a contribution to the July 9th McKeon fundraising dinner from one manager in the Student Banking Division who was not on the June 11, 2004, e-mail distribution list. The Commission concluded that Respondent told this manager to contribute \$600 to the McKeon Committee and directed him to categorize the expense as “customer entertainment.” The Commission also concluded that the manager followed Respondent’s instructions and was reimbursed for his contribution with Bank funds.

13. The Commission concluded that between 1999 and 2004 Respondent authorized the reimbursement of \$7,700 in contributions to federal candidates and political committees with corporate funds. According to Respondent, all of the reimbursements discussed in this

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agreement were made with Bank funds and she did not personally sign any checks in connection with the reimbursements.

14. Respondent contends that, at the time of the contributions listed in this Conciliation Agreement, she believed, in good faith, that her actions were in the best interest of the Bank. Respondent further contends that she received no personal benefit from any of the contributions or activities described in this Agreement.

V. For settlement purposes only, and without admitting the Commission's conclusions contained herein, Respondent will no longer contest the Commission's probable cause to believe findings in this matter.

VI. Respondent Kathleen Cannon will take the following actions:

1. Respondent Kathleen Cannon will pay a civil penalty of Fifteen Thousand Dollars (\$15,000) pursuant to 2 U.S.C. § 437g(a)(5).

2. Respondent Kathleen Cannon will cease and desist from violating 2 U.S.C. §§ 441b(a) and 441f.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent Kathleen Cannon shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION


Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

9/25/09
Date

FOR THE RESPONDENT:


(Name) *Noni Ekan*
(Position) *Counsel to Kathleen Cannon*

8/17/09
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 25 2009

Robert K. Kelner, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401

RE: MUR 5849
Bank of America Corporation

Dear Mr. Kelner:

This is to advise you that the file in this matter has been closed and this matter is now public. Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Marianne Abely

Marianne Abely
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Rubio

Los Angeles, CA 90041

SEP 25 2009

RE: MUR 5849

Dear Mr. Rubio:

On October 17, 2006, you were notified that the Federal Election Commission found reason to believe that you knowingly and willfully violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended. On December 14, 2006, we received your response to the Commission's reason to believe finding. After considering the circumstances of the matter, the Commission determined on September 23, 2009, to take no further action as to you, and closed the file in this matter. The Factual and Legal Analysis explaining the basis for the Commission's decision on September 23, 2009 is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Marianne Abely by PAB".

Marianne Abely
Attorney

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Robert Rubio

MUR: 5849

I. BACKGROUND

The Commission previously found reason to believe that Robert Rubio, a former Production and Support Manager with the Bank of America's ("Bank") Student Banking Division, knowingly and willfully violated 2 U.S.C. § 441f by approving the reimbursement of a \$600 political contribution made by Dale Robertson, a Bank employee under his immediate supervision.

II. DISCUSSION

At the time of the reason to believe finding, it appeared that Rubio may have approved Robertson's reimbursement knowing the activity was illegal because he stopped requesting reimbursement for his own political contributions prior to approving Robertson's request for reimbursement. However, in both his response to the reason to believe findings and in an informal interview, Rubio asserted that he did not know that the reimbursement of political contributions with Bank funds violated the Act at the time he signed off on Robertson's on-line request for reimbursement. None of the evidence gathered during the course of our investigation contradicted Rubio's assertions that he did not know reimbursing political contributions with Bank funds was illegal.

Further, the evidence gathered during the investigation demonstrated that Kathleen Cannon, the former Senior Vice President for the Bank's Student Banking Division, told Robertson that she wanted him to participate in the fundraising event for the McKeon for

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Congress committee and specifically instructed him to contribute \$600 to the committee. She also informed Robertson that he would be reimbursed for the contribution and directed him to categorize the expense as "customer entertainment." Cannon has never denied these facts and does not contest that she is responsible for the events leading up to the reimbursement of Robertson's political contribution with Bank funds. Accordingly, the Commission determined to take no further action with respect to Robert Rubio.

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