



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

William J. McGinley, Esq.  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, D.C. 20037

OCT 10 2008

RE: MUR 5959  
Martinez for Senate  
Nancy H. Watkins in her official  
capacity as Treasurer

Dear Mr. McGinley:

On September 10, 2008, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. §§ 434(a), 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 102.17. 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 date of this letter. If you have any questions, please contact me at (202) 694-1530.

Sincerely,

A handwritten signature in black ink, appearing to read "Jin Lee".

Jin Lee  
Attorney

Enclosure  
Conciliation Agreement

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	MUR 5959
Martinez for Senate	)	
Nancy H. Watkins, in her official capacity	)	
as Treasurer	)	

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe Martinez for Senate and Nancy H. Watkins, in her official capacity as Treasurer (collectively "Respondents"), violated 2 U.S.C. §§ 441a(f) and 434(a), of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 102.17(c)(8) and 104.5(f).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondents enter voluntarily into this agreement with the Commission.
- III. The pertinent facts in this matter are as follows:

Applicable Law

- 1. The Act states that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,000 in any calendar year. 2 U.S.C. § 441a(a)(1)(A). Increased contributions are provided for candidates facing self-

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financed candidates once the self-financed candidates make expenditures from their personal funds that exceed a specific amount. 2 U.S.C. § 441a(i).

2. No candidate or political committee shall knowingly accept any contributions that exceed the limits established by 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).
3. If a committee receives a contribution that appears to be excessive, the committee must either: 1) return the questionable contribution to the donor; or 2) deposit the contribution into its federal account and keep enough funds in the account to cover all potential refunds until the legality of the contribution is established. 11 C.F.R. § 103.3(b)(3) and (4).
4. A committee may redesignate the excessive portion of a contribution to another election, but the committee must, within 60 days of receipt of the contribution, notify the contributor of the amount of the contribution that was redesignated and the option to request a refund. 11 C.F.R. § 110.1(b)(5).
5. A committee may reattribute the excessive portion of a contribution to another individual whose name appears on the written instrument used to make the contribution. 11 C.F.R. § 110.1(k). However, the committee must, within 60 days of receipt of the contribution, notify the contributor of the reattribution and the option to request a refund. 11 C.F.R. § 110.1(k)(3)(ii)(B).
6. When the principal campaign committee of a candidate receives a contribution of \$1,000 or more after the 20th day, but more than 48 hours, before the day of the election in which the candidate is running, the committee must file a notice(s) within 48 hours after the receipt of such contribution. 2 U.S.C. § 434(a)(6); 11 C.F.R. § 104.5(f).

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7. A participating committee of a joint fundraising effort must report joint fundraising proceeds in accordance with 11 C.F.R. § 102.17(c)(8) when such funds are received from the fundraising representative. 11 C.F.R. § 102.17(c)(3)(iii). Under 11 C.F.R. § 102.17(c)(8), a participating political committee must report its share of the net proceeds as a transfer-in from the fundraising representative and must itemize its share of gross receipts as contributions from the original contributors to the extent required under 11 C.F.R. § 104.3(a). 11 C.F.R. § 102.17(c)(8)(i)(B).

**Factual Background**

8. Respondents are Martinez for Senate, the principal campaign committee for Mel Martinez, and Nancy H. Watkins, in her official capacity as Treasurer.
9. Nancy H. Watkins became Treasurer of the Committee after the transactions described in this conciliation agreement occurred and did not provide any services in connection with such transactions.
10. Pursuant to 2 U.S.C. § 438(b), the Commission conducted an audit of Martinez for Senate (the "Committee"). The audit covered the period from January 5, 2004 through December 31, 2004.
11. Based upon the audit, the Commission found that the Committee received 186 contributions, totaling \$313,235, that exceeded the limits established by 2 U.S.C. §§ 441a(a)(1)(A) and 441a(i).
12. Of the excessive contributions, \$218,628 resulted from improper redesignations and/or reattributions because the Committee failed to obtain signed redesignations or reattributions from contributors or provide notifications to contributors of such redesignations or reattributions within 60 days of receipt of the contributions. In

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response to the interim audit report, the Committee provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. The Committee also provided evidence that the notices were sent to both the contributors and the individuals to whom the contributions were reattributed.

13. Of the remaining \$94,607 in excessive contributions, the Committee issued refund checks totaling \$94,607 prior to the issuance of the Final Audit Report and the Commission's Reason to Believe finding in this matter. However, because refund checks totaling approximately \$11,500 have not been negotiated, \$11,500 remains unresolved.
14. The Commission's audit also discovered that the Committee failed to file 26 48-hour notices for contributions totaling \$162,014 that should have been filed pursuant to 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f).
15. The Commission's audit further discovered that the Committee did not properly disclose the receipt of net proceeds, totaling \$319,816, from four joint fundraising committees.
16. The Committee did not itemize its share of gross receipts as contributions from the original contributors as required for transfers totaling \$260,487 from two joint fundraising committees, the 2004 Joint Candidate Committee II and the Majority Fund for America's Future. The Committee, however, did disclose the net transfers to the Committee for these joint fundraising committees.
17. The Committee did not itemize transfers totaling \$59,329 from two other joint fundraising committees, Senate Majority Committee and Martinez Victory Fund.

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18. With respect to the receipts from the joint fundraising committees identified in Paragraph 17, the Committee did not itemize the transfers on Schedule A, Line 12, Transfers from Other Authorized Committee, as required. Instead, the Committee disclosed the contributors as a net amount on Schedule A, Line 11a, Contributions from Individuals, without any reference to the joint fundraising committees.

19. The Commission does not allege that Senator Mel Martinez personally violated the Act or any regulations thereunder.

20. The Committee contends that any violations were inadvertent, and they have taken steps to remedy their internal compliance procedures by hiring an experienced C.P.A. firm and compliance specialist. The Commission has made no findings that the violations described in this Conciliation Agreement were knowing and willful.

**IV. Respondents committed the following violations:**

1. The Committee violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.
2. The Committee violated 2 U.S.C. § 434(a) and 11 C.F.R. § 104.5(f) by failing to file 48-hour notices of contributions.
3. The Committee violated 11 C.F.R. § 102.17(c)(8) by failing to properly disclose proceeds from its joint fundraisers.

**V. Respondents will take the following actions:**

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of ninety-nine thousand dollars (\$99,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). In considering the appropriate civil penalty in this matter, the

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Commission has found mitigating circumstances, including the Committee's cooperation during the audit process.

2. Respondents will cease and desist from violating 2 U.S.C. §§ 434(a), 441a(f), and 11 C.F.R. §§ 102.17(c)(8) and 104.5(f).
  3. Although Respondents have attempted to refund the \$11,500 in unresolved excessive contributions, which were received in violation of 2 U.S.C. § 441a(a), Respondents will disgorge to the U.S. Treasury the \$11,500 in unresolved excessive contributions because the refund checks issued by the Committee were not negotiated within a reasonable amount of time.
- VI. 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.
- VII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.
- VIII. Except as otherwise provided, Respondents 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.
- IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and resolves all allegations that may arise from the Commission's audit of the Committee described in section 3, paragraph 10 of this agreement. No other statement, promise, or agreement, either


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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:

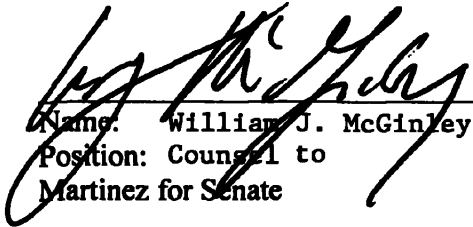
Thomasenia P. Duncan  
General Counsel

BY:

  
~~Kathleen Guith~~ ANN MARIE VERZAKEN  
Acting Associate General Counsel  
For Enforcement

9/16/08  
Date

FOR THE RESPONDENTS:

  
Name: William J. McGinley  
Position: Counsel to  
Martinez for Senate

3/4/2008  
Date

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OFFICE OF GENERAL  
COUNSEL

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October 30, 2008

**TWO WAY MEMORANDUM**

TO: OGC Docket  
FROM: Rosa E. Swinton *RES*  
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from **Martinez for Congress**. The check is number **2803** dated **October 22, 2008** in the amount of **11,500.00**. A copy of the check and all correspondence are attached. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

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TO: Rosa E. Swinton  
Accounting Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$ 11,500.00,  
the MUR/Case number is 5959 and in the name of Martinez for Congress.

Please this deposit in the account indicated below:

           Civil Penalties Account, 95-1099.160

  xx   Miscellaneous Receipt Account, 95-3220.160  
(Disgorgement)

*Kim Collins*  
\_\_\_\_\_  
Signature

10/31/08  
\_\_\_\_\_  
Date

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