22.04.405.4498

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Jenkins for Senate 1996	)	MUR 4872
and Woody Jenkins	)	

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 that Jenkins for Senate 1996 and Louis E. "Woody" Jenkins, ("the Respondents"), knowingly and willfully violated 2 U.S.C. § 434(b)(5)(A).

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 have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Jenkins for Senate 1996 is a political committee within the meaning of 2 U.S.C. § 431(4), and is the authorized principal campaign committee for Woody Jenkins' 1996 senate campaign. Michael A. Tham is the treasurer of Jenkins for Senate 1996.

2. Woody Jenkins was a federal candidate in the 1996 election for Senate in Louisiana.

3. The Federal Election Campaign Act of 1971, as amended ("the Act"), requires each treasurer of a political committee to file reports of receipts and disbursements in accordance with the provisions of the Act. 2 U.S.C. § 434(a). With respect to disbursements, the reports must include, among other things, the total amount of all disbursements and all disbursements for expenditures made to meet candidate or committee operating expenses. 2 U.S.C. § 434(b)(4)(A). The report of a disbursement must include the name and address of each:

> person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i).

4. The Jenkins Committee's 1996 12 Day Pre-General and 1996 30 Day Post General Reports reflect three disbursements on October 7 (TV Ads), October 21 (Ad & Phone Bank), and November 2, 1996 (Ad & Phone Bank), of $27,500 each to Courtney Communications in 1996.

5. Impact Mail & Printing ("Impact Mail"), not Courtney Communications, was the vendor. Courtney Communications was not involved in the provision of the services by Impact Mail and the services provided pertained solely to political advertising via computerized phone banks, and not to television ads.

6. After the 1996 primary election in Louisiana, David Duke contacted Woody Jenkins and recommended that he use the services of a computerized phone bank system run by Impact Mail. Jenkins purchased several rounds of calls from Impact Mail. After the first round of calls, Jenkins began hearing complaints that Duke's name would appear on the caller ID when a phone bank message would arrive. At that point, Jenkins tried to cancel the transaction but was

unable to because Tony Perkins, his campaign manager, had signed a contract with Impact Mail. Subsequently, Jenkins instructed Perkins to put a stop payment on the check issued to Impact Mail and directed that Impact Mail be paid through Courtney Communications, the campaign's media firm. The Jenkins Committee issued three $27,500 checks to Courtney. Courtney, in turn, made out three checks in the same amount to Impact Mail. The treasurer of record, Michael A. Tham, states that he was unaware of the specific transactions with Impact Mail when he entered the information on the disclosure reports. In the case of the first check, Mr. Tham simply assumed it was for TV advertising.

7. The Jenkins Committee contracted with Impact Mail for computerized phone bank services. Jenkins acknowledges that Impact Mail provided the services to the Jenkins Committee. Courtney Communications was not involved in the provision of services by Impact Mail. Jenkins decided to make disbursements for the services through Courtney Communications because he did not want his campaign to be associated with Impact Mail and did not want Impact Mail listed on the Jenkins Committee's disclosure reports.

8. The Respondents contend that the Act and regulations require reporting of "the person to whom an expenditure is made" and not the "ultimate vendor." Respondents further contend that Impact Mail was the "ultimate vendor" in this matter, and cite that Courtney Communications, the vendor that provided media services for Jenkins for Senate 1996, was paid and directed to pay in turn various other vendors e.g., television and radio stations. Respondents contend that the committee did not further itemize payments Courtney made to these and to other third party vendors.

9. Unlike the third party vendors referenced in paragraph 8, Impact Mail was not an "ultimate vendor" or sub vendor of Courtney Communications. Whereas Courtney played a role

in the purchase of services and placement of political advertisements with newspapers, radio stations, and television stations, in some cases contracting with these entities, Courtney had no involvement whatsoever with the services provided by Impact Mail. Indeed, the Jenkins Committee contracted directly with Impact Mail. Courtney's only role in this matter was to serve as a conduit for payment to Impact Mail so as to conceal the transaction with Impact Mail.

V. Respondents knowingly and willfully filed false disclosure reports showing Courtney Communications as the vendor that provided services to the Jenkins Committee, in violation of 2 U.S.C. § 434(b)(5)(A).

VI. The Commission has determined that a civil penalty of $82,500 ordinarily would be appropriate in this matter, but the Commission has agreed to accept a $3,000 civil penalty in settlement of this matter, based on documentation and representations made by Respondents concerning their present financial circumstances. Respondents agree that the Commission's acceptance of this conciliation agreement is conditioned on the truthfulness and completeness of the information they provided. Respondents further agree that if they falsely state or fail to disclose material information concerning their present financial condition, such false statement or omission shall constitute a violation by Respondents of this conciliation agreement and grounds for the Commission to obtain relief against Respondents in a civil action pursuant to 2 U.S.C. § 437g(a)(5)(D). In such a civil action, if the court finds that Respondents falsely stated or failed to disclose any material fact concerning their financial condition, Respondents agree that they will consent to the court's entry of a civil penalty of $82,500, which represents the amount that the Commission would ordinarily seek for the violations at issue. Should a court order relief in connection with proceedings instituted under this Paragraph, this conciliation agreement shall, in all other respects, remain in full force and effect. The civil penalty will be paid as follows:

1. One initial payment of $1,000 due upon the signing of this agreement;
2. Thereafter, no more than 30 days from the date this agreement becomes effective, four consecutive monthly installment payments of $500 each;
3. Each such installment shall be paid within 30 days of the previous installment;
4. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the respondents. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

Respondents will also amend their disclosure reports to accurately reflect Impact Mail as the vendor for the transactions at issue and to accurately describe the purpose of the disbursements. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement this requirement and to so notify the Commission.

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. 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:

Lawrence H. Norton
General Counsel

BY: Rhonda J. Vosdingh — 2/15/02
Rhonda J. Vosdingh — Date
Acting Associate General Counsel
for Enforcement

FOR THE RESPONDENTS:

Louis E. "Woody" Jenkins — January 2, 2002
Louis E. "Woody" Jenkins — Date