

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACK BEAM and RENEE BEAM,

Plaintiffs,

v.

MATTHEW S. PETERSEN, FEDERAL
ELECTION COMMISSION CHAIRMAN,

Defendant.

Civil No. 07cv1227

Judge Rebecca R. Pallmeyer

Magistrate Judge Cole

LR56.1(a) Statement

**DEFENDANT FEDERAL ELECTION COMMISSION'S
LOCAL RULE 56.1(a)(3) STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

In support of its Motion for Summary Judgment filed this date, defendant Federal Election Commission ("Commission" or "FEC") herewith submits its Local Rule 56.1(a)(3) Statement of Material Facts as to which there is no genuine issue and which entitle the Commission to summary judgment as a matter of law. The Commission's Statement also includes a description of the parties and all facts supporting this Court's venue and jurisdiction. LR 56.1(a)(3)(A) & (B). For the reasons stated in the FEC's memorandum of law, there is no genuine dispute that the Department of Justice ("Department" or "DOJ") never transferred to the Commission, and that the FEC never received, any of the plaintiffs' private financial information in violation of the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401 et seq. As a result, this Honorable Court should enter a finding of summary judgment for the Commission.

A. The Parties, Venue and the Court’s Jurisdiction

1. Plaintiffs Jack and Renee Beam are residents of Cook County, Illinois, located in the Northern District of Illinois, Eastern Division. Second Amended Complaint at ¶ 1 (Docket #91). Plaintiffs allege that they have “documentary proof” that “federal agents of the Justice Department and/or FBI had, in fact, obtained [and transferred to the FEC their private] financial records in violation of the RFPA.” *Id.* at ¶¶ 16 & 19.

2. The Federal Election Commission is the independent agency of the United States government empowered to administer, interpret and enforce three federal statutes — the Federal Election Campaign Act, 2 U.S.C. §§ 431-55 (“FECA” or “Act”),¹ the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9013,² and the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042.³ Pursuant to the FECA, the Commission has “exclusive jurisdiction with respect to the civil enforcement”

¹ The FECA imposes extensive requirements for comprehensive public disclosure of contributions and expenditures in connection with federal election campaigns. 2 U.S.C. §§ 432-434. The Act places dollar limitations on contributions by individuals and multi-candidate political committees to candidates for federal office, 2 U.S.C. § 441a(a), and prohibits campaign contributions by corporations and unions from their treasury funds. 2 U.S.C. § 441b(a). The Act also prohibits contributions made in the name of another. 2 U.S.C. § 441f. Contributing money to a candidate in one’s own name using funds provided by someone else is an example of activity that violates 2 U.S.C. § 441f. 11 C.F.R. § 110.4(b)(2)(i).

² The Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9013, provides for a voluntary program of public financing of the general election campaigns of eligible major and minor party nominees for the offices of President and Vice President of the United States.

³ The Presidential Primary Matching Payment Act, 26 U.S.C. §§ 9031-9042, provides partial federal financing for the campaigns of presidential primary candidates who choose to participate and satisfy certain eligibility requirements.

of the Act and the two presidential public funding statutes. 2 U.S.C. § 437c(b)(1).

3. Matthew S. Petersen is the current Chairman of the Commission and is sued here in his official capacity. But if plaintiffs have any cause of action, it is against the Commission itself, which alone has the powers and duties at issue in this case. *See, e.g.*, 2 U.S.C. §§ 437c(b), 437d(a), 437g(a).

4. Plaintiffs assert that subject matter jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 because this action arises under the laws of the United States. Venue in the Northern District of Illinois is proper because the plaintiffs all reside here. 28 U.S.C. §§ 1391(e) and 1402(a).

B. The Department of Justice Never Transferred Any Private Bank Records of Jack or Renee Beam to the Commission

5. The Commission incorporates by reference ¶¶ 5-24 of the FEC's LR56.1(a) Statement filed July 10, 2009 and Exhibits 1-7 attached thereto. (Doc. #142-3).

6. "Merrill Lynch" is a trade name of certain entities owned at the time relevant to this lawsuit by Merrill Lynch & Co., Inc., whose primary business was as a broker-dealer of securities. *See AMERICA'S CORPORATE FAMILIES*, Dunn & Bradstreet, Vol. 1 (2008) at 1121-1122. At that time 15 entities, owned by the corporate parent or one of its subsidiaries, used the trade name "Merrill Lynch." Of these 15 entities, only one, along with one of its subsidiaries, was a "bank," namely, Merrill Lynch Bank USA and its subsidiary Merrill Lynch Business Financial Services, Inc., and both listed their business as "national commercial banks." *Id.* at 1121.

7. FEC staff attorney Phillip Olaya was deposed on March 11, 2009.

Deposition of Phillip A. Olaya, attached as Exh. 8.

8. In a declaration executed on March 11, 2010, Mr. Olaya clarified his deposition testimony and explained that he saw two types of information from DOJ related to this matter: summaries of non-grand jury law enforcement interviews (“302” interviews), and public trial materials (testimony and exhibits) from the 2008 criminal trial of Geoffrey Fieger that DOJ provided to the Commission on a CD after the trial concluded. Declaration of Phillip A. Olaya ¶¶ 4-5, attached as Exh. 9.

9. Mr. Olaya explained that the trial exhibits consisted of two categories of information, specifically summaries of the timeline of relevant events for each conduit reimbursed by the criminal defendants, and financial records reflecting each conduit’s relevant contributions and reimbursements. Olaya Decl. ¶¶ 7-8 (Exh. 9). Mr. Olaya confirmed that none of this material contains any financial information about the Beams. *Id.* ¶¶ 4-9.

10. Mr. Olaya explained that in his deposition, he mistakenly stated that he had seen financial information related to the Beams on the CD of Fieger trial exhibits, but that he did so due to a lapse in concentration after having answered in the affirmative to questions about two other individuals’ information, and “without fully considering Counsel’s questions.” Olaya Decl. ¶¶ 11-12 (Exh. 9).

11. Mr. Olaya also stated that “[t]he records DOJ transmitted to the Commission do not include any financial information that related to Jack or Renee Beam.” Olaya Decl. ¶ 13 (Exh. 9). In addition, Mr. Olaya testified that he saw no other

private financial information relating to the Beams in any other form or context. *Id.* ¶¶ 9, 13.

12. Mr. Dezsi, plaintiffs' attorney, was offered the opportunity to depose Mr. Olaya about the testimony in his declaration, but counsel declined. Letter from Holly Baker to Michael Dezsi, dated March 12, 2010, attached as Exh. 10.

Respectfully submitted,

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