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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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FEDERAL ELECTION COMMISSION,

Plaintiff,

-vs-

CASE NO. 86-687 Civ-T-10(B)

CESAR RODRIGUEZ,

Defendant.

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ORDER

This is an action brought by the Federal Election Commission ("FEC") against Cesar Rodriguez for declaratory, injunctive and other relief pursuant to the Federal Election Campaign Act of 1971, as amended and codified at 2 USC §§ 437d(a)(6), 437g(a)(6)(A) and 441f. It is alleged that the Defendant violated §441f by accepting a contribution to a political campaign by one person in the name of another person. After the Defendant's attorney was allowed to withdraw, the Defendant has elected to proceed pro se.

Before the Court is the FEC's motion for summary judgment. The FEC's one-count complaint alleges a violation of §441f which provides, in pertinent part, that "no person shall knowingly accept a contribution made by one person in the name of another." Although the facts are not in dispute, the Court cannot Grant the FEC's motion.

EXHIBIT 1

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Briefly stated, Rodriguez acted as a go-between, a messenger, for Alan Wolfson. Wolfson wanted to make campaign contributions in excess of the statutory limit, see 4 USC §441a(1)(A), so he had Rodriguez solicit people to make contributions which Wolfson would then reimburse. Rodriguez obtained some of the checks made payable to the order of the campaign committees, and subsequently delivered some of the reimbursement checks from Wolfson to the contributors.

Rodriguez's actions do not appear to constitute "acceptance" of the checks within the meaning of §441f. Nor does it appear that he aided and abetted anyone else who "accepted" the checks. Rodriguez (and Wolfson) may have committed other wrongs, but he could not have "accepted" any contributions because he was neither a candidate nor an agent of a candidate.

The case cited by the FEC for its acceptance argument, United States v. Chestnut, 533 F.2d 40 (2d Cir. 1975), is distinguishable. Chestnut involved an attorney, working on the campaign for a U. S. Senator, who arranged for a contributor to bypass the channels for direct contributions by having the contributor directly pay one of the campaign's creditors. The attorney also arranged for the creditor to directly invoice the contributor for services actually rendered to the campaign. In this manner, the attorney aided and abetted the creditor in accepting an unlawful campaign contribution. The FEC maintains that Chestnut stands for the proposition that a third-party may "accept" a campaign contribution. However, unlike the facts

involving Rodriguez, the creditor in Chestnut did not merely pass along the checks, but was the actual payee of the checks and a knowing participant in the scheme.

Thus, in this case, the correct charge would appear to be that Rodriguez aided and abetted the making of a contribution in the name of another person (Wolfson), not that he aided and abetted the person who "accepted" the contribution (the campaign committee which appears to be innocent of any wrongful acceptance). In short, Rodriguez aided and abetted a violation of the first clause of §441f - - "No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution," rather than the last clause of §441f - - "no person shall knowingly accept a contribution made by one person in the name of another person."

It follows that the motion for summary judgment is due to be, and is hereby, DENIED. This raises the question of whether the FEC can effectively amend the complaint and go forward with this case, or whether it must begin again under the governing statute at the administrative level. Therefore, the FEC is Directed to file a brief on this issue within twenty (20) days, and Rodriguez shall have ten (10) days thereafter to respond. The Court will make an appropriate Order governing the future conduct of this case.

IT IS SO ORDERED.

DONE and ORDERED at Tampa, Florida, this 5th day of May, 1987.



UNITED STATES DISTRICT JUDGE