

PRESENT: HON. THOMAS J. McNAMARA
Acting Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

COPY

IN THE MATTER OF THE APPLICATION OF
ELIZABETH ENGLS, ROBERT GOODMAN,
WILLIAM BRITT, JR., DAVID SCHOENSTEIN,
JERRY AGOVINO, FRANK MODRONE,
FRANCINE CALI, JOYCE CAPPARELLI, ROCCO
TOLORICO, registered voters,

Petitioners,

-against-

DECISION and ORDER

Index No.: 5609-04

RJI No. 01-04-079474

THE NEW YORK STATE BOARD OF ELECTIONS
EVELYN ACQUILLA, HELENA MOSES DONOHUE,
CAROL BERMAN, and NEIL KELLEHER, THE
COMMISSIONERS CONSTITUTING THE NEW
YORK STATE BOARD OF ELECTIONS and

JEFFREY KLEIN, CANDIDATE,
KLEIN FOR ASSEMBLY,
MARILYN KLEIN (sic), TREASURER,
KLEIN 2006, DOMINICK CALDERONI,
TREASURER,

Respondents

For an Order compelling the filing or correction of
financial disclosure statements and the injunction of
the use of monies illegally obtained for the 2004
primary and general elections.

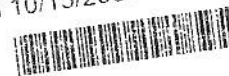
(Supreme Court, Albany County, Motion Term)

APPEARANCES:

John Ciampoli, Esq.
Attorneys for Petitioners
One Commerce Plaza, Suite 702
Albany, New York 12210

William J. McCann, Jr., Esq.
Attorney for Respondent - NYS Board of Elections
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Stanley Kalmon Schlein, Esq.
Attorney for Respondents - Klein
481 King Avenue
Bronx, New York 10464

McNamara, J.

At the time this petition was filed, respondent Jeffrey Klein was a candidate in the primary election to be held September 14, 2004 for the Democratic Party nomination for the office of State Senator, 34th Senate District. Petitioners brought this proceeding alleging that money moved from two political committees authorized by Mr. Klein, Klein 2006 and Klein for Assembly, to a third such committee, Friends of Klein, exceeded the contribution limits in Election Law article 14. Petitioners also contend that certain of the transfers constitute common law conversions.

On June 9, 2004 Friends of Klein received \$17,663.81 from Klein for Assembly. The following day Friends of Klein received \$1,008,836.39 from Klein 2006 and on July 9, 2004 received an additional \$58,000.00 from Klein 2006. The contribution and receipt limits for a candidate for State Senate are \$4,500.00 for the primary election and \$8,500.00 for the general election, for an aggregate maximum contribution of \$13,900.00 (Election Law §14-114; 9 NYCRR §6214). Petitioners contend that each of the three contributions to Friends of Klein from the other two committees exceeded these limits.

The contribution limits set forth above are derived from Election Law §14-114 which limits the amount a contributor may contribute to a person seeking nomination or election to a public office. The statute similarly limits the right of the candidate to accept a contribution. A "contribution" is defined in Election Law §14-100(9)(2) to include "any funds received by a political

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committee from another political committee to the extent such funds do not constitute a transfer.” Therefore, if the exchange of funds between the political committees authorized by Mr. Klein are not “transfers” they are “contributions” and are subject to the limits in Election Law §14-114. Conversely, if they are “transfers” they are not subject to the contribution limits.

A transfer “means any exchange of funds or any thing of value between political committees authorized by the same candidate and taking part solely in his campaign ...”(Election Law §14-100[10]). If each of the three committees involved were authorized by Mr. Klein as a candidate for State Senate, the exchange of funds at issue would clearly constitute transfers and as such would not be subject to the contribution limits in the Election Law. However, though petitioners concede in the verified petition that Friends of Klein is the authorized committee of Mr. Klein as candidate for State Senate, they contend that Klein 2006 is an authorized committee of Mr. Klein but which did not designate any particular office sought. Petitioners claim, upon information and belief, that the funds raised by Klein 2006 were raised for the purpose of supporting the candidate’s campaign for the office of Attorney General in 2006. Also, Klein for Assembly is alleged to be an authorized committee of Mr. Klein designated to support his campaign for the Assembly.¹ Respondent Klein did not submit an answer, relying instead on legal arguments, and therefore, is deemed to have admitted the statements in the verified petition (CPLR 3018[a]).

Resolving the issue of whether the exchanges of funds at issue are “transfers” requires a determination of whether political committees authorized by the same person but formed to support

¹Mr. Klein was a member of the New York State Assembly when he undertook the campaign for nomination for election to the office of State Senator.

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campaigns for different public offices are “authorized by the same candidate and taking part solely in his campaign” (Election Law §14-100[10]). Employing the rules of statutory interpretation the phrase is given its ordinary meaning consistent with the purpose of the statute (*Bath Petroleum Storage v New York State Dept. of Env'tl. Conser.*, 244 AD2d 624). Giving the words in the definition of “transfers” their ordinary meanings, the court is compelled to conclude that the exchanges at issue do not constitute transfers. The definition refers to a singular campaign and refers to a sole purpose of the committee in pursuit of that campaign. The committees here were authorized for three different campaigns and the two donor committees were devoted to purposes other than Mr. Klein’s pursuit of a seat in the State Senate.

In addition, an interpretation which treats such exchanges as contributions is consistent with the purpose of the statute which is to limit contributions to defined amounts depending on the office sought. An interpretation which treats these exchanges as transfers would allow candidates to establish a committee to raise funds in pursuit of a public office with higher contribution limits and then transfer those contributions without restriction to a committee established to support a campaign for a public office with lower contribution limits.

Mr. Klein argues that aggregate transfers of funds between political committees are permitted in excess of the specific contribution limit for the office sought provided that the individual contributions originally made to the transferor committee do not exceed the applicable amount. While this practice would accomplish the intent of the campaign finance law, it is at odds with the statutory scheme. Under the statute, the exchanges are either transfers or contributions. As it has been determined that the exchanges are not transfers, they are contributions subject to the

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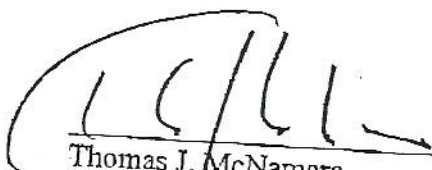
contribution limits. Accordingly, to the extent that the exchanges of June 9, 2004, June 10, 2004 and July 9, 2004 exceed the contribution limits in Election Law §14-114 and 9 NYCRR §6214, the funds must be returned to the donor committees.

This memorandum shall constitute both the Decision and Order of this Court.

SO ORDERED.

ENTER.

Dated: Saratoga Springs, New York
October 4, 2004


Thomas J. McNamara
Acting Supreme Court Justice

Papers Considered:

- 1) Order to Show Cause dated September 10, 2004.
- 2) Verified Petition dated September 9, 2004 with exhibits annexed, verified by John Ciampoli, Esq.
- 3) Verified Answer dated September 14, 2004, verified by William J. McCann, Jr., Esq.
- 4) Affirmation in Opposition of Stanley Kalmon Schlein, Esq. (undated).