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FEDERAL ELECTION
COMMISSION

2011 FEB 26 AM 2: 27

BEFORE THE FEDERAL ELECTION COMMISSION

CELA

In the Matter of)	
)	
Closure of MUR 5472 (Republican)	MUR 5472
Victory Committee a/k/a Republican)	
Victory 2004 Committee and Jody L.)	
Novacek, in her official capacity as)	
treasurer; Jody L. Novacek, in her)	
personal capacity; BPO, Inc. and BPO)	
Advantage LP))	

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CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on February 25, 2011, the Commission decided by a vote of 5-0 to take the following actions in MUR 5472:

1. Close the file in MUR 5472 as to all respondents.
2. Approve the appropriate letters.

Commissioners Bauerly, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision. Commissioner Hunter recused herself with respect to this matter and did not vote.

Attest:

February 25, 2011
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR - 1 2011

Norman Semanko, Esq.
Chief Counsel
Republican National Committee
310 First Street S.E.
Washington, D.C. 20003

RE: MUR 5472

Dear Mr. Semanko:

This is in reference to the complaint dated June 29, 2004, filed by your client with the Federal Election Commission ("Commission"). On March 6, 2009, the Commission filed a lawsuit in federal district court against Jody L. Novacek, Republican Victory Committee a/k/a Republican Victory 2004 Committee ("RVC"), BPO, Inc. and BPO Advantage, LP for violations of 2 U.S.C. §§ 441d(a), 441h(b)(1) and 441h(b)(2). On April 14, 2010, the district court entered an order of final judgment.

The district court held that 1) the defendant Novacek and Republican Victory Committee, Inc. knowingly and willfully violated 2 U.S.C. § 441h(b)(1) by fraudulently misrepresenting themselves as acting for, or on behalf, of a political party for the purpose of soliciting contributions; 2) Defendants BPO, Inc. and BPO Advantage, LP knowingly and willfully violated 2 U.S.C. § 441h(b)(2) by participating in Novacek and RVC's plan, scheme or design to fraudulently misrepresent themselves as acting for, or on behalf, of a political party for the purpose of soliciting contributions; and 3) Novacek and RVC violated 2 U.S.C. § 441d(a) and (c) by failing to include on their communications the required disclaimer information in the manner specific by the statute.

The district court awarded the Commission declaratory and injunctive relief, and ordered the Defendants to pay a joint and several civil penalty in the amount of \$47,414.15 for the violations of the fraudulent misrepresentation provisions of 2 U.S.C. § 441h(b) and the disclaimer provisions in 2 U.S.C. § 441d. In addition, the district court ordered that any contributions currently held by non-party Apex CoVantage, L.L.C. or its agents that were obtained in the solicitations made for RVC shall be turned over to the Commission for return to the contributors, if possible. If that was not possible, then any checks were to be destroyed and any cash was to be paid over to the Republican Party. A copy of the Final Judgment Granting Plaintiff's Motion for Summary Judgment is

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Norman Semanko, Esq.
MUR 5472

enclosed. On May 15, 2010, the defendants filed a notice of appeal to the Fifth Circuit. On September 16, 2010, the Fifth Circuit affirmed the district court's judgment.

On February 25, 2011, the Commission closed the file in MUR 5472 as to all respondents, and these matters are now public. 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).

If you have any questions, please contact the staff attorney, Kimberly Hart, at (202) 694-1650.

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure

11044291306

**IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FEDERAL ELECTION COMMISSION,	§	
	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 3:09-CV-444-M
	§	
JODY L. NOVACEK, REPUBLICAN	§	
VICTORY COMMITTEE, INC., a/k/a	§	
Republican Victory 2004 Committee, BPO,	§	
INC., and BPO ADVANTAGE, LP,	§	
	§	
Defendants.	§	

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FINAL JUDGMENT

On April 14, 2010, the Court granted the Motion for Summary Judgment of Plaintiff the Federal Election Commission ("the Commission") on its claims against Defendants for violations of 2 U.S.C. §§ 441h(b)(1) and (2), 441d(a) and (c) [Docket Entry #35].

The Court therefore DECLARES that:

- (1) Defendant Novacek and the Republican Victory Committee, Inc. ("RVC") knowingly and willfully violated 2 U.S.C. § 441h(b)(1) by fraudulently misrepresenting themselves as acting for, or on behalf of, a political party for the purpose of soliciting contributions;
- (2) Defendants BPO, Inc. and BPO Advantage, LP knowingly and willfully violated 2 U.S.C. § 441h(b)(2) by participating in Novacek and RVC's plan, scheme or design to fraudulently misrepresent themselves as acting for, or on behalf of, a political party for the purpose of soliciting contributions; and
- (3) Novacek and RVC violated 2 U.S.C. § 441d(a) and (c) by failing to include on their communications the required disclaimer information in the manner specified by

statute.


It is therefore ORDERED that Defendants Novacek, RVC, BPO, Inc. and BPO Advantage, LP are permanently enjoined from further violations of the Act similar to those found by the Court.

It is further ORDERED that Defendants are jointly and severally required to pay a civil penalty in the amount of \$47,414.15 for their violations of the fraudulent misrepresentation provisions in 2 U.S.C. § 441h(b) and the disclaimer provisions in 2 U.S.C. § 441d. This penalty reflects the Court's determination from the record that a total contribution amount of \$37,414.15 was involved in the violations of 2 U.S.C. § 441h(b). The Court finds that an amount comprised of one hundred percent of the contributions involved in those violations, together with \$5,000.00 for each of the two sets of solicitations made in violation of 2 U.S.C. § 441d, is an appropriate civil penalty under 2 U.S.C. § 437g(6)(A) and (B).

It is further ORDERED that any contributions currently held by non-party Apex CoVantage, L.L.C. or its agents that were obtained in the solicitations made for RVC shall be turned over to the Commission for return to the contributors, if possible. If that is not possible, then any checks shall be destroyed and any cash shall be paid over to the Republican Party. All relief sought but not granted herein is DENIED.

SO ORDERED.

April 14, 2010.


BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS

11044291308



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA Electronic Mail

Jody L. Novacek
Republican Victory Committee
a/k/a Republican Victory 2004 Committee
BPO Advantage, LP
BPO, Inc.

MAR - 1 2011

RE: MUR 5472

Dear Ms. Novacek:

On April 14, 2010, the district court in *FEC v. Jody L. Novacek, Republican Victory Committee, Inc. a/k/a Republican Victory 2004 Committee, BPO, Inc. and BPO Advantage, LP* entered an order of final judgment. The district court held that 1) the defendant Novacek and Republican Victory Committee, Inc. ("RVC") knowingly and willfully violated 2 U.S.C. § 441h(b)(1) by fraudulently misrepresenting themselves as acting for, or on behalf, of a political party for the purpose of soliciting contributions; 2) Defendants BPO, Inc. and BPO Advantage, LP knowingly and willfully violated 2 U.S.C. § 441h(b)(2) by participating in Novacek and RVC's plan, scheme or design to fraudulently misrepresent themselves as acting for, or on behalf, of a political party for the purpose of soliciting contributions; and 3) Novacek and RVC violated 2 U.S.C. § 441d(a) and (c) by failing to include on their communications the required disclaimer information in the manner specific by the statute.

The district court awarded the Commission declaratory and injunctive relief, and ordered the Defendants, including yourself, to pay a joint and several civil penalty in the amount of \$47,414.15 for the violations of the fraudulent misrepresentation provisions of 2 U.S.C. § 441h(b) and the disclaimer provisions in 2 U.S.C. § 441d. In addition, the district court ordered that any contributions currently held by non-party Apex CoVantage, L.L.C. or its agents that were obtained in the solicitations made for RVC shall be turned over to the Commission for return to the contributors, if possible. If that was not possible, then any checks were to be destroyed and any cash was to be paid over to the Republican Party. A copy of the Final Judgment Granting Plaintiff's Motion for Summary Judgment is enclosed. On May 15, 2010, the defendants filed a notice of appeal to the Fifth Circuit. On September 16, 2010, the Fifth Circuit affirmed the district court's judgment.

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Jody L. Novacek, et al.
MUR 5472
Page 2

On February 25, 2011, the Commission closed the file in MUR 5472 as to all respondents, and these matters are now public. 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).

If you have any questions, please contact the staff attorney, Kimberly Hart, at (202) 694-1650.

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure

11044291301

**IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FEDERAL ELECTION COMMISSION,

Plaintiff,

v.

JODY L. NOVACEK, REPUBLICAN
VICTORY COMMITTEE, INC., a/k/a
Republican Victory 2004 Committee, BPO,
INC., and BPO ADVANTAGE, LP,

Defendants.

§
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CIVIL ACTION NO. 3:09-CV-444-M

FINAL JUDGMENT

On April 14, 2010, the Court granted the Motion for Summary Judgment of Plaintiff the Federal Election Commission ("the Commission") on its claims against Defendants for violations of 2 U.S.C. §§ 441h(b)(1) and (2), 441d(a) and (c) [Docket Entry #35].

The Court therefore DECLARES that:

- (1) Defendant Novacek and the Republican Victory Committee, Inc. ("RVC") knowingly and willfully violated 2 U.S.C. § 441h(b)(1) by fraudulently misrepresenting themselves as acting for, or on behalf of, a political party for the purpose of soliciting contributions;
- (2) Defendants BPO, Inc. and BPO Advantage, LP knowingly and willfully violated 2 U.S.C. § 441h(b)(2) by participating in Novacek and RVC's plan, scheme or design to fraudulently misrepresent themselves as acting for, or on behalf of, a political party for the purpose of soliciting contributions; and
- (3) Novacek and RVC violated 2 U.S.C. § 441d(a) and (c) by failing to include on their communications the required disclaimer information in the manner specified by

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statute.


It is therefore ORDERED that Defendants Novacek, RVC, BPO, Inc. and BPO Advantage, LP are permanently enjoined from further violations of the Act similar to those found by the Court.

It is further ORDERED that Defendants are jointly and severally required to pay a civil penalty in the amount of \$47,414.15 for their violations of the fraudulent misrepresentation provisions in 2 U.S.C. § 441h(b) and the disclaimer provisions in 2 U.S.C. § 441d. This penalty reflects the Court's determination from the record that a total contribution amount of \$37,414.15 was involved in the violations of 2 U.S.C. § 441h(b). The Court finds that an amount comprised of one hundred percent of the contributions involved in those violations, together with \$5,000.00 for each of the two sets of solicitations made in violation of 2 U.S.C. § 441d, is an appropriate civil penalty under 2 U.S.C. § 437g(6)(A) and (B).

It is further ORDERED that any contributions currently held by non-party Apex CoVantage, L.L.C. or its agents that were obtained in the solicitations made for RVC shall be turned over to the Commission for return to the contributors, if possible. If that is not possible, then any checks shall be destroyed and any cash shall be paid over to the Republican Party. All relief sought but not granted herein is DENIED.

SO ORDERED.

April 14, 2010.


BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS

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COMMISSION

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THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

1
2 **MEMORANDUM**

3
4 TO: The Commission

5
6 FROM: P. Christopher Hughey
7 Acting General Counsel

8
9 BY: Kathleen Guith *KG*
10 Acting Associate General Counsel for Enforcement

11
12 Mark D. Shonkwiler *MS*
13 Assistant General Counsel

14
15 Kimberly D. *KDH*
16 Staff Attorney

17
18 RE: Closure of MUR 5472 (Republican Victory Committee a/k/a Republican
19 Victory 2004 Committee and Jody L. Novacek, in her official capacity as
20 treasurer; Jody L. Novacek, in her personal capacity; BPO, Inc. and BPO
21 Advantage LP)

22
23 **ACTIONS RECOMMENDED**

24
25 Close the file in MUR 5472 as to all respondents.

26
27 **DISCUSSION**

28
29 In any compliance matter in which a civil action is commenced, the Commission
30 is required to make public the files in the underlying enforcement action no later than
31 thirty days from the date on which the Commission notifies the complainant and
32 respondent of the final disposition of the civil action. See 11 C.F.R. § 111.20(c). On
33 March 6, 2009, the Commission filed a lawsuit in federal district court against Jody L.
34 Novacek, Republican Victory Committee a/k/a Republican Victory 2004 Committee,
35 BPO, Inc. and BPO Advantage, LP for violations of 2 U.S.C. §§ 441d(a), 441h(b)(1) and
36 441h(b)(2) (the "RVC litigation").

37
38 On April 14, 2010, the district court in the RVC litigation entered an order of final
39 judgment. The district court held that 1) the defendant Novacek and Republican Victory
40 Committee, Inc. ("RVC") knowingly and willfully violated 2 U.S.C. § 441h(b)(1) by

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1 fraudulently misrepresenting themselves as acting for, or on behalf, of a political party
2 for the purpose of soliciting contributions; 2) Defendants BPO, Inc. and BPO Advantage,
3 LP knowingly and willfully violated 2 U.S.C. § 441h(b)(2) by participating in Novacek
4 and RVC's plan, scheme or design to fraudulently misrepresent themselves as acting for,
5 or on behalf, of a political party for the purpose of soliciting contributions; and
6 3) Novacek and RVC violated 2 U.S.C. § 441d(a) and (c) by failing to include on their
7 communications the required disclaimer information in the manner specified by the
8 statute. The district court awarded the Commission declaratory and injunctive relief, and
9 ordered the Defendants to pay a joint and several civil penalty in the amount of
10 \$47,414.15 for the violations of the fraudulent misrepresentation provisions of 2 U.S.C.
11 § 441h(b) and the disclaimer provisions in 2 U.S.C. § 441d. In addition, the district court
12 ordered that any contributions currently held by non-party Apex Advantage, L.L.C. or its
13 agents that were obtained in the solicitation made for RVC shall be turned over to the
14 Commission for return to the contributors, if possible. If that was not possible, then any
15 checks were to be destroyed and any cash was to be paid over to the Republican Party.
16

17 On May 15, 2010, the defendants filed a notice of appeal to the Fifth Circuit. On
18 September 16, 2010, the Fifth Circuit affirmed the district court's judgment. All time
19 periods for further appeals by the Defendants, including a request for a writ of certiorari,
20 have expired. In addition, the Litigation Division has contacted Apex regarding the
21 contribution checks and they have agreed to turn over the approximately 500 remaining
22 checks to the Commission in compliance with the court's order so that we can attempt to
23 return them to the contributors. Apex is in the process of inventorying/copying the
24 contribution checks so that the originals can be provided to the Commission for return to
25 the contributors in compliance with the court order.
26

27 Accordingly, it appears that the RVC litigation has reached its final conclusion,
28 and there is nothing prohibiting the public release of the file in MUR 5472 once the
29 Commission approves the closing of the file as to all respondents and the notification
30 letters required by section 111.20(c) are sent.
31

32 **RECOMMENDATIONS**

- 33
- 34 1. Close the file in MUR 5472 as to all respondents.
 - 35 2. Approve the appropriate letters.
- 36
37
38

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