



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AUG 14 2018

RE: MUR 7472
Barletta Engineering Corporation
Barletta Heavy Division, Inc.
Adphalt Corp.
BBG Agency, LLC
First Fidelity Corporation
Puma Corporation
Vincent Barletta

Dear Mr. Vicinanza:

On September 28, 2016, you notified the Federal Election Commission (the "Commission"), in a *sua sponte* submission, that your clients, Vincent Barletta, Barletta Engineering Corporation, Barletta Heavy Division, Inc., Adphalt Corp., BBG Agency LLC, First Fidelity Corporation, and Puma Corporation, violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

After reviewing the submission, the Commission found reason to believe, on August 7, 2018, that Vincent Barletta violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e); and that Barletta Engineering Corporation, First Fidelity Corporation, and Adphalt Corp. violated 52 U.S.C. §§ 30118(a) and 30122; and 11 C.F.R. § 114.2(b). Further, the Commission voted to close the file as to Barletta Heavy Division, Inc., BBG Agency LLC and Puma Corporation. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a

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way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1618 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹ This matter will remain confidential in accordance with 52 U.S.C.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report

§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,

Caroline C. Hunter/esh

Caroline Hunter
Chair

information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **MUR 7242**

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8 **RESPONDENTS:**

Vincent Barletta
Adphalt Corp.
Barletta Engineering Corporation
First Fidelity Corporation

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13 **I. INTRODUCTION**

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15 In this *sua sponte* submission (“Submission”), Vincent Barletta (“Barletta”) and various
16 business entities under his control¹ disclosed that between 2011 and 2015, Barletta caused three
17 corporations he controlled (BEC, First Fidelity, and Adphalt) to reimburse \$39,800 in federal
18 contributions made in the names of these companies’ employees or their spouses.² Barletta and
19 his businesses filed the Submission because the Massachusetts Office of Campaign and Political
20 Finance (“OCPF”) raised questions about the reimbursement of federal contributions during its
21 investigation of Respondents’ reimbursement of state contributions, and Respondents’
22 Disposition Agreement with OCPF required them to self-report possible federal violations to the
23 Commission.³

¹ See Submission, Pre-MUR 598 (Barletta) (Sept. 28, 2016). Although the initial submission listed six Barletta-controlled entities, later supplemental submissions clarified that only three of these entities: Barletta Engineering Corporation (“BEC”); First Fidelity Corporation (“First Fidelity”); and Adphalt Corp. (“Adphalt”) had reimbursed federal contributions. See E-mail from David Vicinanza, Esq. to Kimberly Hart, OGC (Jan. 8, 2018) (“January 8, 2018 E-mail”); E-mail from David Vicinanza, Esq. to Kimberly Hart, OGC (Jan. 9, 2018) (“January 9, 2018 E-mail”); E-mail from David Vicinanza, Esq. to Kimberly Hart, OGC (Jan. 21, 2018) (“January 21, 2018 E-mail”).

² After the Commission notified the individual conduits of the submission, Barletta, the corporations, and the conduits filed a joint supplemental submission that included a sworn affidavit from each conduit. See CELA Notification Letters, P-MUR 598 (Barletta) (Dec. 21, 2016.); see also Supplemental Submission, P-MUR 598 (Barletta) (May 12, 2017) (“Suppl. Submission”); Supplemental Submission, P-MUR 598 (Barletta) (July 6, 2017) (“Suppl. Submission #2”).

³ See OCPF Disposition Agreement at pp.6, n.2, 13-14.

1 **II. FACTUAL BACKGROUND**

2 Vincent Barletta owns or controls a number of Massachusetts-based construction
3 businesses. Barletta is the president, CEO, and owner of BEC, which is an active Massachusetts
4 corporation.⁴ Barletta also controls and funds First Fidelity, a corporation that loans money to
5 other Barletta-controlled entities.⁵ Finally, Barletta owned and controlled Adphalt, a corporation
6 that was involuntarily dissolved by court order on June 30, 2016.⁶

7 As shown on the chart below, between 2011 and 2015, BEC, First Fidelity, and Adphalt
8 reimbursed eighteen federal contributions totaling \$39,800 made by BEC employees or their
9 spouses.⁷ Barletta admits he was solely responsible for asking his employees to make the
10 contributions and approving their reimbursement requests.⁸

4 *Id.* at 1.

5 Although Ronald Gillis is listed as the nominal President and owner of First Fidelity, Respondents maintain that Barletta exercised total control over First Fidelity activities. *See* January 8, 2018 Email. Email from David Vicinanza, Esq. to Kimberly D. Hart, Esq., OGC (Feb. 4, 2018) (“February 4, 2018 Email”). Respondents claims that there are “sound business reasons for this common structure.” *See* February 4, 2018 Email.

6 *See* January 8, 2018 Email. Barletta and Timothy Barletta had an 80% ownership interest in Adphalt, and the remaining 20% was owned by individuals not related to the Barletta family. *Id.* Barletta was the manager for Adphalt. *Id.*

7 Submission at 1. Although Barletta made a total of \$31,100 in contributions to federal candidates and committees from his own personal funds between 2012 and 2015, the Submission states that he was never reimbursed for any of his political contributions. *Id.*

8 *Id.* at 2.

<u>Contributor⁹</u>	<u>Date</u>	<u>Recipient Committee</u>	<u>Contr. Amount</u>	<u>Reimbursement Amount</u>	<u>Reimbursement Method¹⁰</u>
Ann-Marie Gardella	2/22/11	Capuano for Congress	\$2,500	\$2,500	Adphalt check
Daniel Gardella	2/25/13	Lynch for Senate	\$2,600	\$2,600	Adphalt check
Martin Naughton	4/26/13	Lynch for Senate	\$2,600	\$2,600	cash or check
Leonard Brown	6/09/14	Lynch for Congress	\$500	\$500	cash
Linda Brown	6/09/14	Lynch for Congress	\$500	\$500	cash
Daniel Gardella	6/09/14	Lynch for Congress	\$500	\$500	cash
Ann-Marie Gardella	6/09/14	Lynch for Congress	\$500	\$500	cash
Kevin Huie	6/09/14	Lynch for Congress	\$2,000	\$2,000	cash or check
Christopher Spencer	6/09/14	Lynch for Congress	\$2,000	\$2,000	cash or check
Christopher Spencer	8/18/14	Massachusetts Democratic State Committee	\$5,000	\$5,000	First Fidelity check
Ryan Ondrejko	8/27/14	Massachusetts Democratic State Committee	\$5,000	\$5,000	BEC check
Dallas Babineau	6/05/15	Lynch for Congress	\$2,600	\$2,600	cash or check
Daniel Gardella	6/06/15	Lynch for Congress	\$2,600	\$2,600	First Fidelity check
Anne-Marie Gardella	6/06/15	Lynch for Congress	\$2,600	\$2,600	First Fidelity check
Ryan Ondrejko	6/06/15	Lynch for Congress	\$2,600	\$2,600	First Fidelity check
Dallas Babineau	7/22/15	Schuster for Congress	\$500	\$500	First Fidelity check
John Dargin	9/28/15	Capuano for Congress	\$2,600	\$2,600	cash or check
Thomas Day	9/28/15	Capuano for Congress	\$2,600	\$2,600	First Fidelity check
			Total Contr. Amt. = \$39,800	Total Reimb. Amt. = \$39,800	

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 2 Barletta's sworn affidavit details the circumstances of the contributions and the
 3 reimbursements by BEC, First Fidelity, and Adphalt.¹¹ Barletta states that he received "urgent"
 4 or "last minute" requests from industry associations or unions to raise certain amounts in
 5 contributions to political candidates and committees, and Barletta felt pressured to meet these
 6 requests.¹² Accordingly, he asked BEC employees if they, or their spouses, would consider

⁹ All of the conduits, except for Leonard Brown and Ann-Marie Gardella, are employed by BEC. See January 21, 2018 E-mail. Leonard Brown and Ann-Marie Gardella are spouses to Linda Brown and Daniel Gardella, respectively. *Id.*

¹⁰ Respondents have not been able to locate the reimbursement check Adphalt issued to Ann-Marie Gardella for her 2011 contribution. See February 8, 2018 E-mail. As to the contributions designated as being reimbursed with cash, Respondents indicate that it is most likely either that Adphalt or First Fidelity was the source, although they cannot be certain. *Id.* For the contributions designated as being reimbursed with "cash or check," Respondents indicate that they are unable to determine whether the reimbursements were made in cash or by check from Adphalt or First Fidelity. *Id.*

¹¹ See Barletta Affidavit, P-MUR 598 (Barletta) (Oct. 17, 2017) ¶¶ 2-5 ("Barletta Aff."). Barletta further indicates that he had very little, if any, interaction with the candidates to whom he contributed and never hosted fundraisers for any of these candidates. *Id.* ¶ 3.

¹² *Id.*

1 making political contributions.¹³ Barletta maintains that he never pressured or required an
2 employee or a spouse to make a contribution, but he approved reimbursements to any
3 contributing employee or spouse who asked.¹⁴ Barletta states that the majority of the employees
4 and spouses who requested reimbursement were “lower-earning employees for whom the
5 political contributions were financially onerous.”¹⁵ According to Respondents, the
6 reimbursements were made from whichever Barletta-controlled company had extra funds on
7 hand.¹⁶

8 Barletta states that he approved the reimbursements because it was the “obligation of the
9 businesses to support the industry request and I did not want to burden employees who were
10 affected by the contribution they made.”¹⁷ Barletta claims that he did not give much thought or
11 attention to the legality of the reimbursements.¹⁸

12 In 2015, OCPF investigated state campaign contributions made by employees of Barletta-
13 controlled entities.¹⁹ In September 2016, OCPF, Barletta, and his companies entered into a
14 Disposition Agreement regarding state contributions totaling \$35,500 nominally made by
15 employees at Barletta-controlled companies and these employees’ spouses. According to
16 OCPF’s review, on at least 60 occasions, Barletta and his companies either advanced conduits

¹³ Barletta Aff. ¶ 3.

¹⁴ *Id.* at ¶¶ 4, 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ¶ 2.

¹⁸ *Id.*

¹⁹ Submission at 2.

1 money to make political contributions, or reimbursed their contributions.²⁰ Under the
2 Disposition Agreement, Respondents resolved these violations and were required to pay
3 \$185,000 to the state's general fund and were barred from many state political activities for five
4 years.²¹ The Disposition Agreement also required Respondents to notify the Commission
5 regarding alleged corporate reimbursements of federal contributions.²²

6 Respondents assert that they immediately stopped reimbursing contributions as soon as
7 OCPF's investigation made them aware that such reimbursements were illegal.²³ To prevent any
8 recurrence, Respondents also implemented a compliance and training program to educate current
9 and future employees on the Act's requirements and restrictions. The Disposition Agreement
10 required Barletta and his companies to implement the compliance and training program.²⁴

11 II. LEGAL ANALYSIS

12 The Act and Commission regulations prohibit a corporation from making a contribution
13 to a federal committee (other than an independent-expenditure-only committee) and any person,
14 including a corporation, from making a contribution in the name of another person.²⁵ The term

²⁰ Disposition Agreement at 2, 12. OCPF found that Barletta and his companies violated Massachusetts statutes prohibiting corporate contributions and "contributions made in a manner intended to disguise the true source of the contributions." *Id.* at 11-12.

²¹ See Disposition Agreement at 12-13.

²² *Id.*

²³ Suppl. Submission at 3; see also Barletta Aff. ¶ 8.

²⁴ Disposition Agreement at 13. Affidavits provided by the conduits and managers attest to the fact that they have received training and now understand that contributions cannot be reimbursed with company funds. See Conduits Affs.; Barletta Aff.; Email from George Vien, Esq. to Kimberly Hart, Esq., OGC (Feb. 9, 2018) at ¶ 4 ("Gillis Aff.").

²⁵ See 52 U.S.C. §§ 30118(a) and 30122; see also *United States v. O'Donnell*, 608 F.3d 546, 550 (9th Cir. 2010) (concluding that the plain language of section 30122 [formerly section 441f] encompasses straw donor contributions whether accomplished through the advancement of reimbursement of funds).

1 “person” for purposes of the Federal Election Campaign Act of 1971, as amended (the “Act”)
2 and Commission regulations includes corporations.²⁶ Further, the Act prohibits an officer or
3 director of a corporation from consenting to the making of a corporate contribution.²⁷ A person
4 may not knowingly permit one’s name to be used to effect the making of a contribution in the
5 name of another.²⁸

6 The Submission states that Barletta caused Adphalt, BEC, and First Fidelity to use
7 corporate funds to reimburse \$39,800 in federal contributions. This establishes reason to believe
8 that Adphalt, BEC, and First Fidelity made prohibited corporate contributions in the names of
9 others in violation of sections 30118(a) and 30122; and that Barletta, as a corporate officer,
10 consented to the making prohibited contributions in violation of section 30118(a). The conduits
11 acknowledge that they were asked to make contributions to the various federal candidates and
12 committees and were reimbursed.²⁹ Accordingly, the Commission finds reason to believe that
13 Adphalt, BEC, and First Fidelity violated 52 U.S.C. §§ 30118(a) and 30122; and 11 C.F.R.
14 §§ 114.2(b) and 110.4(b)(1).³⁰ In addition, the Commission finds reason to believe that Vincent
15 Barletta violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e).

²⁶ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁷ *Id.* § 30118(a), 11 C.F.R. § 114.2(e).

²⁸ 11 C.F.R. § 110.4(b)(1)(i).

²⁹ *See* Conduit Affs.

³⁰ Although Gillis was the nominal president/owner of First Fidelity, the available information indicates that he was an employee of Barletta and had no control over the use of First Fidelity funds to reimburse contributions. *See* Gillis Aff.

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