



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

December 7, 2023

Via Electronic Mail

Juan E. Rodríguez Díaz, Esquire
Juan E. Rodríguez Díaz Law Offices
416 Ponce de León Ave., Suite 1201
Hato Rey (San Juan), PR 00918-3422
jerdlawpr@gmail.com

RE: MUR 8190 (AR 22-05)
Aníbal Comisionado 2020

Dear Mr. Rodríguez Díaz:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting Aníbal Comisionado 2020 and José Luis Mendoza in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 4, 2023, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by misstating receipts. The Factual and Legal Analysis, which formed the basis for the Commission's finding, is enclosed for your information.

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 as a 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 client violated the law.

If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 60 days, you should respond to this notification as soon as possible. Accordingly, if your client is

Juan E. Rodríguez Díaz, Esquire
MUR 8190 (Anibal Comisionado 2020)
Page 2


interested in engaging in pre-probable cause conciliation, please contact Gordon King, the attorney assigned to this matter, at (202) 694-1022 or gking@fec.gov, 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 60 days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). 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/em/respondent_guide.pdf. This matter will remain confidential in accordance with 52 U.S.C. § 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.

We look forward to your response.

On behalf of the Commission,


Dara Lindenbaum
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Aníbal Comisionado 2020 and José Luis Mendoza MUR 8190
in his official capacity as treasurer

I. INTRODUCTION

This matter arises from an audit of the 2020 activity of Aníbal Comisionado 2020 and José Luis Mendoza in his official capacity as treasurer (the “Committee”). On October 17, 2022, the Commission approved the Proposed Final Audit Report, which included findings that the Committee overstated reported receipts by \$44,455, disbursements by \$16,195, understated its cash on hand by \$12,640 in calendar year 2020, and that it failed to disclose or inadequately disclosed occupation and employer information for 304 contributions totaling \$118,169.¹ The Audit Division referred the finding concerning the misstatement of receipts totaling \$44,455 to the Office of General Counsel (“OGC”) for possible enforcement action.²

As described below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 104.3(a) of the Commission’s regulations by overstating its receipts by \$44,455.

II. FACTUAL BACKGROUND

Aníbal Comisionado 2020 is the principal campaign committee of Aníbal Acevedo-Vilá, who was a candidate in the 2020 election cycle for Puerto Rico’s Resident Commissioner

¹ See Certification (Oct.17, 2022), 2020 A21-03 (Proposed Final Audit Report on Anibal Comisionado), https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_VotePFAR_2020.pdf and Final Audit Report of the Commission on Aníbal Comisionado 2020 (Oct. 31, 2022) https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_FARC_2020.pdf (“FAR”).

² Referral at 1 (Oct. 24, 2022).

1 delegate to the House of Representatives.³ Acevedo-Vilá lost the 2020 general election.⁴ He
2 previously served as Resident Commissioner from 2001 through 2005.⁵

3 During an audit of the Committee’s disclosure reports filed between February 10, 2020,
4 and December 31, 2020, Audit staff identified discrepancies in the Committee’s receipts,
5 disbursements, and cash on hand during 2020.⁶ In response to the Audit Division’s Interim
6 Audit Report (“IAR”), Committee staff stated that they believed the reporting discrepancies
7 identified by the Audit Division were the result of issues with third-party filing software,
8 explaining that the “principal reason for the differences is attributable to duplication of receipts
9 and disbursements in the reports filed by the committee” because of “problems with the
10 software.”⁷ At that time, the Committee stated that it would conduct a detailed analysis of its
11 records and, if necessary, file appropriate amendments with the Commission or file supplemental
12 submissions.⁸ The Audit Division recommended that the Committee amend its disclosure
13 reports or file a miscellaneous text submission to correct its misstatements, but the Committee
14 did not do so at that time. Later, in response to the Audit Division’s Draft Final Audit Report,

³ See Anibal Comisionado 2020, Amended Statement of Organization, (May 12, 2020), <https://docquery.fec.gov/pdf/400/202005129232671400/202005129232671400.pdf>.

⁴ FEC, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE, AND THE U.S. HOUSE OF REPRESENTATIVES at 160 (2022), https://www.fec.gov/resources/cms-content/documents/federal_elections2020.pdf.

⁵ *Acevedo Vilá, Anibal*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS <https://bioguide.congress.gov/search/bio/A000359> (last visited Oct. 24, 2023). Acevedo-Vilá served as governor of Puerto Rico from 2005 to 2009.

⁶ See FAR at 2.

⁷ Referral at 5; see Anibal Comisionado 2020, Miscellaneous Text Submission at 1 (May 17, 2022), https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_CmteResponseIAR_2020.pdf (containing the Committee’s response to the Draft FAR).

⁸ Referral at 5.

1 the Committee filed submissions correcting the record regarding its disbursements and cash on
2 hand for calendar year 2020 but did not correct the misstatements concerning its receipts.⁹

3 At the time that the Commission published the FAR, the Committee had yet to address its
4 misstated receipts. In its initial response to the Referral notification, the Committee stated that
5 the Committee’s treasurer was investigating “what exact information was submitted and filed
6 with the FEC” on the Committee’s Miscellaneous Text Submissions from August 2022.¹⁰
7 Subsequently, in August 2023, the Committee filed a submission addressing its misstated
8 receipts, explaining that it encountered technical issues relating to the file size of its August 2022
9 submissions; specifically, it “made an error while uploading documents and for Finding 1, we
10 only included the parts referring to the disbursements, and inadvertently did not include the parts
11 in reference to the receipts.”¹¹ In a second response to the Referral, the Committee stated that it
12 filed a Miscellaneous Text Submission with the Commission on August 24, 2023, to correct the
13 public record regarding its receipts in 2020 and noted the Committee’s “eventual compliance.”¹²

⁹ *Id* at 6; *see* Anibal Comisionado 2020, Miscellaneous Text Submission (July 29, 2022), <https://docquery.fec.gov/pdf/762/202207299525086762/202207299525086762.pdf> (addressing missing or inaccurate disclosures of contributor occupation and employer information); Anibal Comisionado 2020, Miscellaneous Text Submission (July 29, 2022), <https://docquery.fec.gov/pdf/768/202207299525086768/202207299525086768.pdf> (addressing missing or inaccurate disclosures of contributor occupation and employer information). The Committee also made submissions to address corrections to its disbursements from 2020. *See* Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/472/202208129525374472/202208129525374472.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/487/202208129525374487/202208129525374487.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/502/202208129525374502/202208129525374502.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/519/202208129525374519/202208129525374519.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/531/202208129525374531/202208129525374531.pdf>.

¹⁰ Resp. at 1 (July 18, 2023).

¹¹ *See* Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 24, 2023), <https://docquery.fec.gov/pdf/926/202308249596775926/202308249596775926.pdf>.

¹² Supp. Resp. at 1 (Aug. 29, 2023).

1 **III. LEGAL ANALYSIS**

2 The Act requires committee treasurers to file reports of receipts and disbursements in
3 accordance with the provisions of 52 U.S.C. § 30104.¹³ These reports must include, among other
4 things, the total amount of receipts, including the appropriate itemizations, where required.¹⁴ As
5 found in the Commission’s FAR and acknowledged in the Committee’s responses during the
6 audit, the Committee overstated reported receipts by \$44,455 in calendar year 2020.¹⁵

7 Although it acknowledges the violation, the Committee states that the discrepancies
8 identified by Audit were the result of software issues, but does not specifically invoke the Act’s
9 best efforts provision or explain how it met the elements of that provision.¹⁶ Under the Act’s
10 best efforts provision, when a treasurer of a political committee shows that best efforts have been
11 used to obtain, maintain, and submit the information required by the Act, any report submitted by
12 the committee will be considered to be in compliance with the Act.¹⁷ The Commission has
13 explained that the best efforts provision is an affirmative defense that the respondent must
14 establish — the burden rests with the political committee and its treasurer to present evidence
15 sufficient to demonstrate that best efforts were exercised to obtain, maintain, and submit the
16 required information.¹⁸ The Commission has further explained that errors caused by a

¹³ See 52 U.S.C. § 30104(a)(1); *see also* 11 C.F.R. § 104.1.

¹⁴ See 52 U.S.C. § 30104(b)(2); *see also* 11 C.F.R. § 104.3(a).

¹⁵ FAR at 3.

¹⁶ See Anibal Comisionado 2020, Miscellaneous Text Submission at 1 (May 17, 2020),
https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_CmteResponseIAR_2020.pdf
(containing the Committee’s response to the IAR).

¹⁷ See 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7(a).

¹⁸ See, e.g., Factual & Legal Analysis (“F&LA”) at 5, MUR 7043 (Put Alaska First) (reflecting that the Commission considers a committee’s affirmative steps taken to keep adequate records and make accurate reports, but the defense excludes inexperience, negligence, or error of committee staff or agents.); *see also* Statement of Policy Regarding Treasurers’ Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) (“Best Efforts Policy”) (indicating that the

1 Committee's own negligence or errors, or a third party's delay, are generally insufficient to
2 establish this defense.¹⁹ In other matters involving software issues which led to misstatements in
3 disclosures to the Commission, as is the case here, the Commission has found reason to believe
4 and authorized pre-probable cause conciliation.²⁰ Accordingly, the Commission concludes that
5 the Committee has not satisfied the best efforts provision.

6 Therefore, the Commission finds reason to believe that the Committee violated 52 U.S.C.
7 § 30104(b) and 11 C.F.R. § 104.3(a).

Commission does not consider the best efforts defense unless a respondent asserts the facts that form the basis of that defense).

¹⁹ See Best Efforts Policy, 72 Fed. Reg. at 31,440.

²⁰ See, e.g., F&LA at 5, MUR 7054 (Oakland County Democratic Party) (In a RAD referral, Respondent stated that the reporting errors were due to information not properly transferred from QuickBooks to their reporting software, NGP VAN, and requested that the Commission take no action. The Commission found reason to believe and authorized pre-probable cause conciliation.); see also F&LA at 5-6, MUR 7603 (Wyoming Republican Party, Inc.) (In a RAD referral, Respondent stated that the reporting errors were due to miscommunications between two vendors and requested that the matter be transferred to ADRO. The Commission found reason to believe and authorized pre-probable cause conciliation.).