

FEC Fines Corporations Nearly \$1 Million After Foreign CEO Gets Involved in Super PAC Contributions

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Earlier this month, the Federal Election Commission (FEC or Commission) announced one of the largest fines in the agency's history – \$975,000 – against two U.S.-based corporations that were involved in contributing \$1.75 million to a federal super PAC. While corporate contributions to super PACs are generally permissible, the FEC found particular fault here with the role the parent corporation's Canadian CEO played in the decision-making process.

According to news accounts and just-released documents, the matter originated when representatives of a federal super PAC contacted a lawyer at Zekelman Industries, an Illinois-based corporation that is North America's largest steel-tube manufacturer, about a potential contribution. The super PAC's pitch centered around how the funds would be used to help elect candidates that supported the Trump-Pence agenda, which included support for the U.S. steel industry.

Personnel within Zekelman Industries brought the proposal to the attention of CEO Barry Zekelman, a native of Windsor, Canada, who expressed enthusiasm for the idea. Zekelman discussed the proposal with Zekelman Industries' General Counsel, Mickey McNamara, who was also president of a Pennsylvania-based subsidiary corporation, Wheatland Tube. McNamara, in turn, consulted with a colleague on Wheatland Tube's board of directors, Mike Graham, about whether Wheatland Tube would want to contribute. Ultimately, the subsidiary made \$1.75 million in contributions to the Trump-aligned super PAC between April and October 2018. All of the persons involved in this process maintain that, regardless of what role Zekelman may have had in initiating the idea, McNamara and company personnel

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exercised independent judgment in determining that the contributions were an appropriate and beneficial use of Wheatland Tube resources. In their view, Zekelman's involvement did not rise to a violation of the ban on foreign nationals participating in a corporation's political decision-making process.

The FEC disagreed, finding reason to believe that Zekelman's actions here violated the ban. The Commission found it irrelevant that a U.S. citizen may have "had final decision-making authority or final say regarding the making of the contribution." Instead, the key issue was whether a foreign national had participated "in *any* way in the decision-making process with regard to making ... proposed contributions." (Emphasis in original.) The Commission also underscored that, in this case, McNamara directly reported to Zekelman, suggesting that the former had a particular obligation to follow-through on the discussions.

After making its initial affirmative finding, the Commission entered into settlement negotiations with the parties. Ultimately, the companies agreed to a \$975,000 civil fine and acceded to a request to ask the super PAC to either refund their \$1.75 million contributions or disgorge that amount to the U.S. Treasury. The FEC dismissed the case against the super PAC and the individuals involved. Among its many lessons, this matter underscores the importance of corporations walling off foreign national executives from participating in any discussions about making contributions or expenditures in connection with U.S. elections.