



New York City
Campaign Finance Board

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July 13, 2012

Rhoda L. Weinstein
Friends of Kevin Kim



Dear Ms. Weinstein:

Please find attached the New York City Campaign Finance Board's (the "CFB" or "Board") Final Audit Report for the 2009 campaign of Kevin D. Kim (the "Campaign"). The report is based on a comprehensive review of the Campaign's financial disclosure statements and submitted documentation, and incorporates the Board's final determination of June 21, 2012 (attached). As detailed in the report, the Campaign did not fully demonstrate compliance with the requirements of the Campaign Finance Act (the "Act") and the Rules of the Board (the "Rules").

As detailed in the attached Final Board Determination, the Campaign was assessed penalties totaling \$2,675. The Campaign previously paid this amount, on May 10, 2012 and June 20, 2012.

The January 15, 2010 disclosure statement (#16) was the last disclosure statement the Campaign was required to file with the CFB for the 2009 elections. The Campaign is required to maintain its records for six years after the election, and the CFB may require the Campaign to demonstrate ongoing compliance. *See* Rules 3-02(b)(3), 4-01(a), and 4-03. In addition, please contact the Board of Elections for information concerning their separate filing requirements.

July 13, 2012

The CFB thanks you for your cooperation during the 2009 election cycle. Should you have any questions about the enclosed report, please contact the Audit Unit at 212-306-5250 or AuditMail@nyccfb.info.

Sincerely,

[signature on original]

Julius Peele
Director of Auditing and Accounting

c: Kevin Kim

[Redacted]

Friends of Kevin Kim

[Redacted]

Attachments

July 13, 2012

**CAMPAIGN FINANCE BOARD
FINAL AUDIT REPORT OF
FRIENDS OF KEVIN KIM**

BACKGROUND

Among the purposes of the Act are to diminish the role and influence of private money in New York City elections, to increase the information available to the public about elections and candidates' campaign finances, and to reduce the potential for actual or perceived corruption. The CFB is a nonpartisan, independent city agency that serves the public interest by enhancing the role of New York City residents in the electoral process. All candidates for the five covered offices - mayor, public advocate, comptroller, borough president, and City Council member - are required to disclose all campaign activity to the CFB.

All candidates must adhere to strict contribution limits and the ban on contributions from corporations, and beginning January 1, 2008, partnerships and limited liability entities. Additionally, participating candidates are prohibited from accepting contributions from unregistered political committees. The CFB also administers the voluntary Campaign Finance Program (the "Program"). Candidates who voluntarily participate in the Program can qualify to have private contributions matched with public money in exchange for agreeing to strict spending limits.

CAMPAIGN INFORMATION

The table below provides detailed information about the Campaign:

Name: Kevin Kim	ID: 1322
Office Sought: City Council	District: 19
Classification: Non-Participant	Filer Registration: March 9, 2009
Committee Name: Friends of Kevin Kim	Ballot Status: Primary, General
Primary Election Date: September 15, 2009	General Election Date: November 3, 2009
Other Committees: No	Party: Democratic, Working Families
	<u>Contribution Limit:</u>
	\$2,750

OBJECTIVES

The overall objective of the CFB's audit was to determine whether the Campaign complied with the Act and Rules. Specifically, CFB staff evaluated whether (1) the Campaign accurately reported financial transactions and maintained adequate books and records; (2) the Campaign adhered to contribution limits and prohibitions; and (3) the Campaign disbursed funds in accordance with the Act and Rules.

SCOPE AND METHODOLOGY

Prior to the election, CFB staff performed an initial review of the Campaign's reporting and documentation of contributions for public funds eligibility and compliance with the Act and Rules. After the election, CFB staff performed an audit of financial disclosure statements seven through sixteen (see Appendix #1), covering the period from March 6, 2009 through January 11, 2010. The audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures as necessary. This audit was performed in accordance with the audit responsibilities of the CFB as set forth in Administrative Code §3-710.

CFB staff examined the bank statements submitted by the Campaign from April 1, 2009 through September 30, 2011 and reconciled transactions to the Campaign's disclosure statements during this period to verify that all financial transactions were accurately reported and documented.

CFB staff conducted a comprehensive review of all financial transactions reported in the Campaign's disclosure statements to determine whether contribution limits and prohibitions were adhered to. Additionally, CFB staff reviewed the Campaign's reported expenditures to ensure that the Campaign disbursed funds in accordance with the Act and Rules.

On May 27, 2011, CFB staff issued a Draft Audit Report to the Campaign that contained preliminary findings of non-compliance with the Act and Rules and recommended corrective actions. The Campaign subsequently responded to the Draft Audit Report.

Based on CFB staff recommendations and the Campaign's responses, the Board issued this Final Audit Report.

CONCLUSION

The Campaign did not fully demonstrate compliance with the requirements of the Campaign Finance Act and the Rules of the Board as detailed below:

Disclosure Findings - Accurate public disclosure is an important part of the CFB's mission. Findings in this section relate to the Campaign's failure to completely and timely disclose the Campaign's financial activity.

- The Campaign did not file, by the due date, a financial disclosure statement required by the Board (see Finding #1). The Board found the Campaign in violation and assessed a \$150 penalty.
- The Campaign did not file the required daily disclosure statements during the two weeks preceding the 2009 general election (see Finding #2). The Board found the Campaign in violation and assessed a \$200 penalty.
- The Campaign did not report or inaccurately reported financial transactions to the Board (see Finding #3). The Board found the Campaign in violation and assessed a \$250 penalty.
- The Campaign did not adequately disclose required contributor employment information (see Finding #4). The Board found the Campaign in violation and assessed a \$200 penalty.

Contribution Findings - All campaigns are required to abide by contribution limits and adhere to the ban on contributions from prohibited sources. Further, campaigns are required to properly document and disclose all contributions. Findings in this section relate to the Campaign's failures to comply with the requirements for contributions under the Act and Rules.

- The Campaign accepted aggregate contributions exceeding the \$2,750 contribution limit for the 2009 election cycle (see Finding #5). The Board found the Campaign in violation and assessed \$1,625 in penalties.
- The Campaign did not provide requested documentation for a reported transaction (see Finding #6).
- The Campaign accepted a cash contribution greater than \$100 (see Finding #7).

- During the pre-election period, the Campaign accepted a contribution that exceeded the applicable \$250 City Council Doing Business limit: Kyu Heung Park, \$2,500 on July 20, 2009. The Campaign refunded the over-the-limit portion on May 8, 2012. However, the refund was not issued within 20 days of receiving notice from the CFB. The Board found the Campaign in violation and assessed a \$250 penalty.

FINDINGS AND RECOMMENDATIONS

1. Failure to File and/or Late Filings

Campaigns are required to file disclosure statements on scheduled dates. *See* New York City Charter §1052(a)(8), Administrative Code §3-703(6) and 3-708(8) and Rules 1-09(a) and 3-02.

The Campaign failed to file, by the due date, the following:

<u>Statement #</u>	<u>Due Date</u>	<u>Date Filed</u>	<u># Days Late</u>
8	05/15/09	05/18/09	3

Previously Provided Recommendation

You must explain the lateness for the statement listed above. You may provide additional documentation to the CFB if it was not previously submitted.

Campaign's Response

The Campaign acknowledged that “the filing was only one day late even though it was submitted on May 18, 2009.” The Campaign “accepts any penalties associated with the violation.”

Board Action

The Board found the Campaign in violation and assessed a \$150 penalty.

2. Daily Pre-Election Disclosure – Statements of Contributions/Expenditures

During the two weeks preceding an election, if a candidate: (1) accepts a contribution or contributions from a single source or loan in excess of \$1,000; or (2) makes an expenditure in excess of \$20,000; during the 14 days preceding an election, the candidate shall report such contributions, loans, and expenditures to the Board in a

disclosure, received by the Board within 24 hours after it is accepted or made. These contributions and expenditures must also be reported in the Campaign's next disclosure statement. *See* Rule 3-02(e).

The Campaign did not file the required daily disclosures to report transactions that were reported on its subsequent financial disclosure statements (see Exhibit I).

Previously Provided Recommendation

You must explain why your failure to file the daily disclosures is not a violation. If you believe you filed the required daily disclosures, you should submit proof of the submission. Your Campaign cannot file any daily pre-election disclosures now.

Campaign's Response

The Campaign stated it missed a filing because it was their first election experience. However it "accepts any penalties associated with the violation."

Board Action

The Board found the Campaign in violation and assessed a \$200 penalty.

3. Financial Disclosure Reporting - Discrepancies

Campaigns are required to report every contribution, loan, and other receipt received, and every disbursement made. *See* Administrative Code §3-703(6) and Rule 3-03. In addition, campaigns are required to deposit all receipts into an account listed on the candidate's Filer Registration *See* Administrative Code §3-703(10) and Rule 2-06(a). Campaigns are also required to provide the CFB with bank records, including periodic bank statements and deposit slips. *See* Administrative Code §§3-703(1)(d), (g), and Rules 4-01(a),(b)(1),(f).

The Campaign provided CFB staff with its bank statements covering the period of April 1, 2009 through September 30, 2011.

a) The Campaign failed to report the following transactions:

<u>Name</u>	<u>Transaction Type</u>	<u>Date</u>	<u>Amount</u>
Kim, Kevin*	Loan Forgiven	09/21/09	\$9,000.00
Kim, Kevin**	Loan Forgiven	10/01/09	\$500.00
Kim, Kevin*	Loan Forgiven	11/16/09	\$75,000.00

- *The Campaign provided documentation stating that this loan has been forgiven.
**The Campaign reported a loan of \$4,000.00 and a partial loan repayment of \$3,500.00, and provided documentation to show that the remainder (\$500.00) of the loan was forgiven.

- b) The Campaign reported 19 transactions totaling \$1,037 that do not appear on its bank statements (see Exhibit II).
- c) The Campaign did not provide copies of its itemized deposit slips.
- d) The Campaign did not provide copies of its merchant account statements.

Previously Provided Recommendation

- a) You must amend your disclosure statements to report these unreported transactions.
- b) For each transaction reported in the Campaign's disclosure statements but not appearing on the Campaign's bank statements, you must provide evidence to show that the transaction cleared the bank (i.e., a copy of the front and back of the check, or the missing bank statement), was reported in error, or amend your disclosure statement to void the check and forgive the expenditure payment. Any forgiven liabilities will be considered an in-kind contribution.
- c) You must provide copies of all itemized deposit slips.
- d) You must provide copies of all merchant account statements.

Please note that any newly entered transactions will only appear as new transactions in an amendment to the last disclosure statement, even if the transaction dates are from earlier periods. Also note that the Campaign must file an amendment for each disclosure statement in which transactions are being modified. Once all data entry is completed, you should run the Modified Statements Report in C-SMART to identify the statements for which amendments must be submitted. If any new transactions have been added, you must amend Disclosure Statement 16.

Campaign's Response

- a-b) The Campaign did not respond to these findings.
- c) The Campaign provided copies of its itemized deposit slips. A comparison of itemized deposit slips to reported cash contributions resulted in a cash variance of 20.73%.
- d) In response to the Draft Audit Report, the Campaign stated that it did not have copies of merchant account statements from Pyrix because the vendor deducted commissions directly prior to any amounts hitting the Campaign's bank account. For Paymentech, the Campaign stated that it never received statements previously, and was informed by Paymentech that it could not access statements earlier than 13 months from the date it was contacted. In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign first provided illegible statements from Pyrix. It subsequently provided transaction statements from Pyrix. A comparison of the submitted documentation from Pyrix to credit card contributions reported in the Campaign's filings resulted in a variance of 55%:

Total Reported Credit Card Contributions	Total Contributions per Merchant Account Statements	Dollar Variance	Percent Variance
\$144,336.01	\$64,601.01	\$79,735.00	55%

Board Action

- a-b) The Board has taken no further action on these matters other than to make them a part of the Candidate’s record with the Board.
- c) Since cash contributions are only 1.6% of the total reported contributions, the Board has taken no further action on these matters other than to make them a part of the Candidate’s record with the Board.
- d) The Board found the Campaign in violation and assessed a \$250 penalty for failure to provide merchant account statements.

4. Missing Employment Information

Campaigns are required to report the occupation, employer, and employer address for each contributor making total contributions of more than \$99. *See* Administrative Code §3-703(6) and Rules 3-03(c)(1), (6).

The Campaign did not report 40.25% of the required employment information for contributors who gave in excess of \$99.

Previously Provided Recommendation

You must amend each applicable disclosure statement to provide the CFB with the missing employment information.

Campaign's Response

The Campaign responded to the Draft Audit Report and stated that it attempted to collect employment information from each contributor. However, several contributors refused to disclose their employment information.

Board Action

The Board found the Campaign in violation and assessed a \$200 penalty.

5. Contributions Over the Limit

Campaigns may not accept contributions from any single source in excess of the applicable contribution limit for the entire election cycle. A single source includes, but is not limited to, any person or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled. Cumulative contributions from a single source may include monetary contributions, in-kind contributions, outstanding loans or advances, and debts older than 90 days unless the vendor has made a commercially reasonable attempt to collect payment.

Candidates participating in the Program may contribute to their own campaign up to three times the contribution limit. Non-participating candidates are not limited in the amount they can contribute to their own campaign from their own money. *See* Administrative Code §3-703(1)(f) and Rule 1-04(h).

Creditors who extend credit beyond 90 days are considered to have made a contribution equal to the credit extended, unless the creditor continues to seek payment of the debt. Outstanding liabilities that are forgiven or settled for less than the amount owed are also considered contributions. *See* Rule 1-04(g)(4), (5).

CFB staff's review revealed the following instances where the Campaign exceeded the contribution limit:

CONTRIBUTIONS EXCEEDING THE LIMIT OF \$2,750:

<u>Name</u>	<u>Statement/Schedule/ Transaction ID</u>	<u>Transaction Type</u>	<u>Received Date</u>	<u>Amount</u>
Chiang, Ching Kuo**	9/ABC/R0000228	Monetary Contribution	05/21/09	\$2,750.00
Chang, Ching Kuo**	14/ABC/R0003536	Monetary Contribution	10/08/09	\$2,750.00
			Total	\$5,500.00
			Office Limit	(\$2,750.00)
			Amount Over-the-Limit	<u>\$2,750.00</u>
Kim, Soonja	8/ABC/R0000059	Contribution	04/07/09	\$2,750.00
Kim, Soonja**	15/I/R0004338	Loan	10/31/09	\$30,000.00
Kim, Soonja	unreported	Loan Repayment	09/30/10	(\$15,000.00)
Kim, Soonja	unreported	Loan Repayment	10/31/10	(\$15,000.00)
			Total	<u>\$2,750.00</u>

* These contributors are reported with the same address.

** A loan outstanding on the date of the election is a contribution subject to the contribution limit.

Previously Provided Recommendation

You must refund the over-the-limit portion of the contribution by bank or certified check and provide the CFB with copies of the refund check or pay the Public Fund an amount equal to the amount of the overage. You must respond by indicating why you failed to comply with the contribution limit.

If you disagree with this finding, you must provide an explanation and documentation to demonstrate that the finding is not a violation.

For outstanding liabilities, you may provide documentation showing that the debt remains an outstanding liability and that the creditor is attempting to collect the debt such as current invoices, collection notices, and/or letters from creditors.

Even if the over-the-limit contribution is refunded, exceeding the contribution limit may result in a finding of a violation and the assessment of penalties.

Campaign’s Response

The Campaign responded to the Draft Audit Report by refunding the amount over the limit to Mr. Chiang, and providing a copy of the refund check. The Campaign responded to the Notice of Alleged Violations and Recommended Penalties by stating that Soonja Kim is the candidate’s mother, and asked that the penalty be waived or reduced, given that the loan she made to the Campaign was repaid in full. However, the Campaign did not state why the loan was not returned by the date of the election.

Board Action

The Board found the Campaign in violation and assessed \$1,625 in penalties: \$125 for Ching Kuo Chiang, and \$1,500 for Sonja Kim.

6. Undocumented Transactions

Campaigns are required to provide copies of checks, bills, or other documentation to verify all transactions reported in their disclosure statements. *See* Administrative Code §§3-703(1)(d), (g), and Rule 4-01.

The Campaign must provide supporting documentation for the following reported transaction:

<u>Name</u>	<u>Transaction Type</u>	<u>Statement/Schedule/ Transaction ID</u>	<u>Refund Date</u>	<u>Amount</u>
Tsang, Bernard J.	Expenditure Refund	16/L/R0005149	11/30/09	\$2,370.00

Previously Provided Recommendation

You must submit documentation for the transaction listed above.

Campaign’s Response

In response to the Draft Audit Report, the Campaign stated that Mr. Tsang withdrew \$3,000 in cash for Election Day spending. Only \$630 was actually spent and the remaining \$2,370 was re-deposited into the Campaign’s bank account.

Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate’s record with the Board.

7. Cash Contributions Greater Than \$100

Campaigns cannot accept cash contributions that total more than \$100 from a single contributor. *See* New York State Election Law §14-118(2).

The Campaign received cash contributions that exceeded \$100 from the following contributor:

<u>Name</u>	<u>Statement/Schedule/ Transaction ID</u>	<u>Received/ Refunded Date</u>	<u>Amount</u>	<u>Amount Over-the- Cash Limit</u>
Choi, Kenneth	9/ABC/R0000238	05/21/09	\$100.00	
Choi, Kenneth	9/ABC/R0001396	07/02/09	\$100.00	
		Total	<u>\$200.00</u>	<u>\$100.00</u>

Previously Provided Recommendation

You must refund the portion of the contribution that exceeds \$100 to the contributor by bank or certified check and provide the CFB with a copy of each refund check or pay the Public Fund the amount equal to the overage. You must also explain why the Campaign failed to comply with the cash contribution limit. If you disagree with this finding, you must provide an explanation and documentation to demonstrate why each finding is not a violation.

Even if the portion over \$100 is refunded, accepting a cash contribution of more than \$100 from a single contributor may result in a finding of violation and the assessment of a penalty.

Campaign's Response

The Campaign acknowledged that “it was an oversight to have accepted two \$100 payments in cash,” and has refunded \$100 to the contributor. The Campaign “accepts any penalties incurred as a result of this oversight.”

Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

**New York City Campaign Finance Board
Campaign Finance Information System
Transaction Summary Report
Appendix 1**

Candidate: Kim, Kevin D (ID:1322-NP)**Office:** 5 (City Council)**Election:** 2009

1. Opening cash balance (All committees)		\$0.00
2. Total itemized monetary contributions (Sch ABC)		\$524,443.06
3. Total unitemized monetary contributions		\$0.00
4. Total in-kind contributions (Sch D)		\$0.00
5. Total unitemized in-kind contributions		\$0.00
6. Total other receipts (Sch E - excluding CFB payments)		\$0.00
7. Total unitemized other receipts		\$0.00
8. Total itemized expenditures (Sch F)		\$638,557.83
Expenditure payments	\$624,939.46	
Advance repayments	\$13,618.37	
9. Total unitemized expenditures		\$0.00
10. Total transfers-In (Sch G)		\$0.00
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$0.00	
11. Total transfers-out (Sch H)		\$0.00
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$0.00	
12. Total loans received (Sch I)		\$118,000.00
13. Total loan repayments (Sch J)		\$3,500.00
14. Total loans forgiven (Sch K)		\$0.00
15. Total liabilities forgiven (Sch K)		\$0.00
16. Total expenditures refunded (Sch L)		\$3,895.87
17. Total receipts adjustment (Sch M - excluding CFB repayments)		\$7,400.00
18. Total outstanding liabilities (Sch N - last statement submitted)		\$6,829.45
Outstanding Bills	\$6,628.00	
Outstanding Advances	\$201.45	
19. Total advanced amount (Sch X)		\$0.00
20. Net public fund payments from CFB		\$0.00
Total public funds payment	\$0.00	
Total public funds returned	\$0.00	
21. Total Valid Matchable Claims		N/A
22. Total Invalid Matchable Claims		N/A
23. Total Amount of Penalties Assessed		\$2,675.00
24. Total Amount of Penalty Payments		\$2,675.00
25. Total Amount of Penalties Withheld		\$0.00

Exhibit I
Friends of Kevin Kim
2009 Elections
Pre-Election Disclosure Transactions
(see Finding #2)

<u>Name</u>	<u>Received Date</u>	<u>Transaction ID</u>	<u>Amount</u>
Choi, Hyung Kee	10/23/09	15/ABC/R0004210	\$1,000.00
Choi, Hyung Kee	11/02/09	15/ABC/R0004789	\$2,000.00
		Total	<u>\$3,000.00</u>
Choi, Woo Jin	10/28/09	15/ABC/R0004277	\$2,700.00
Commit. To Elect Gary Ackerman	11/02/09	15/ABC/R0004769	\$2,750.00
Hau, Sandor M	10/22/09	15/ABC/R0004666	\$1,000.00
Hau, Sandor M	10/31/09	15/ABC/R0004723	\$500.00
		Total	<u>\$1,500.00</u>
Hwang, Yong T	10/23/09	15/ABC/R0004236	\$500.00
Hwang, Yong T	10/28/09	15/ABC/R0004272	\$1,600.00
		Total	<u>\$2,100.00</u>
Kim, Yong Sun	10/28/09	15/ABC/R0004273	\$1,500.00
Jung, Seung Ju	10/28/09	15/ABC/R0004279	\$2,550.00
Kwon, Ilyeon	10/28/09	15/ABC/R0004281	\$2,750.00
Local 1500 Political Candidate	10/31/09	15/ABC/R0004346	\$1,500.00
Lee, Hyun Ho	10/28/09	15/ABC/R0004275	\$2,000.00
Morimoto, Edward S	10/31/09	15/ABC/R0004344	\$2,500.00
Lee, You Sup	10/31/09	15/ABC/R0004347	\$1,750.00
Yoon, Sung H	10/31/09	15/ABC/R0004349	\$2,500.00
Tsang, Bernard J	10/31/09	15/ABC/R0004359	\$1,000.00
Tsang, Bernard J	11/02/09	15/ABC/R0004360	\$500.00
		Total	<u>\$1,500.00</u>
Mutimedia	10/29/09	15/F/R0004196	\$15,000.00
Mutimedia	10/30/09	15/F/R0004332	\$15,000.00
Mutimedia	10/31/09	15/F/R0004337	\$22,750.00
		Total	<u>\$52,750.00</u>
Kim, Soonja	10/31/09	15/I/R0004338	\$30,000.00

Exhibit II

Friends of Kevin Kim

2009 Elections

Uncashed Checks/Transactions Not Appearing on Bank Statements

(see Finding #3b)

<u>Payee</u>	<u>Check No.</u>	<u>Statement/Schedule/ Transaction ID</u>	<u>Date</u>	<u>Amount</u>
Sibrian, David	1043	9/F/R0000962	06/16/09	\$50.00
Myers, David	1070	9/F/R0000756	06/16/09	\$10.00
Shih, Eva	1112	9/F/R0000915	06/22/09	\$40.00
Xie, Scott	1117	9/F/R0000927	06/22/09	\$30.50
Rosa, Christopher	1121	9/F/R0000939	06/22/09	\$50.00
Myers, David	1104	9/F/R0000896	06/22/09	\$30.00
Ori, Jonathan	1178	9/F/R0001155	06/30/09	\$190.00
Park, Charles	1197	9/F/R0001192	06/30/09	\$75.00
Guaman, Richard	1209	9/F/R0001219	07/07/09	\$90.00
Goldes, Jordan	1253	9/F/R0001944	07/28/09	\$67.50
Cho, Libby	1322	13/ F/R0002706	09/16/09	\$104.00
Cho, Libby	1322	13/ F/R0002708	09/16/09	\$48.00
Bae, Woohyun	1326	13/ F/R0002723	09/16/09	\$32.00
Nam, Ignatius	1340	13/ F/R0002766	09/16/09	\$44.00
Choi, James	1410	13/F/R0002959	09/16/09	\$48.00
Peng, Helen	1420	13/F/R0002989	09/16/09	\$65.00
Kim, Catherine	1465	13/F/R0003110	09/24/09	\$24.00
Lee, Sue	1474	13/F/R0003139	09/26/09	\$24.00
Lee, Julia	1623	15/F/R0004651	11/09/09	\$15.00
			Total	<u>\$1,037.00</u>