

## CIVIL PENALTY REFERRAL

**Lobbyist:** Powers Crane & Company, LLC

**Client:** Duane Reade, Inc.

**Alleged Violations:**

Filing of a false 2003 January/February Bimonthly Report pursuant to §1-o of the Lobbying Act, Laws of 2005.

Filing of a false 2003 March/April Bimonthly Report pursuant to §1-o of the Lobbying Act, Laws of 2005.

Filing of a false 2003 May/June Bimonthly Report pursuant to §1-o of the Lobbying Act, Laws of 2005.

Filing of a false 2003 July/August Bimonthly Reports pursuant to §1-o of the Lobbying Act, Laws of 2005.

**Maximum Penalty Pursuant to Statute:** Up to \$200,000; or up to \$50,000 for each of the four alleged violations described above.

**Basis for Referrals:**

In 2003, Duane Reade, Inc. was the registered client of the lobbying firm Powers Crane & Company LLC. These referrals arose during a random audit conducted in March 2006 of the 2003 Lobbyist Registration and Bimonthly Reports for the lobbying firm formerly known as Powers, Crane & Company LLC for its client Duane Reade.

According to documents provided Commission staff, Powers Crane & Company LLC issued invoices to its client Duane Reade, Inc. for "disbursements", "expenses" or simply to attend "events" or "fundraisers" for various public officials during the period February 2003 through July 2003. However, the lobbyist did not report those charges to the Commission in contemporaneous filings.

Following are the expenses that were not disclosed in reports to the Commission:

Duane Reade Invoice No. 808, which lists two "disbursements" of \$500 each to "attend" a "Senator Meier event" and a "Senator Maziarz event" on February 24, 2003 (Exhibit 1);

Duane Reade Invoice No. 855, which lists a \$500 "disbursement" to attend a Democratic Assembly Campaign Committee event in New York, New York on February 26, 2003 (Exhibit 2);

Duane Reade Invoice No. 903, which lists a \$500 expense to "attend" a "Senator DeFrancisco event" in Albany, NY on March 24, 2003; a \$350 expense to "attend" the "Senator Morahan Fundraiser" on April 8, 2003 (Exhibit 3);

Duane Reade Invoice No. 948, which lists entries for \$500 expenses to "attend" an "Assemblyman Gromack Event" on May 27, 2003, and a "Senator Morahan Event" on June 3, 2003 (Exhibit 4);

Duane Reade Invoice No. 993, which lists a \$1,000 expense to "attend" an event on June 30, 2003, for Senator Balboni, and a \$1,000 expense to attend an event for Assemblyman Gianaris in New York, New York, on July 10, 2003 (Exhibit 5).

None of these expenses, disbursements or payments of the client to the lobbyist was reported in the Bimonthly Reports for the applicable time period, which is violative of the Lobbying Act (Exhibit 6). These reportable events described above cover the time period from February 2003 through July 2003. These events should have been reported in the four bimonthly reports that are the subject of these false filing referrals.

Furthermore Commission staff reviewed electronic filings maintained by the NYS Board of Elections relating to political donations to the public officials and campaign committees named in the invoices referenced above.

It is critical to note in this regard, that section 14-120(1) of the Election Law provides that "[n]o person shall in any name except his own, directly or indirectly, make a payment or promise of payment to a candidate or political committee or to any officer or member thereof, or to any person acting under its authority or in its behalf or on behalf of any candidate, nor shall any such committee or any such person or candidate knowingly receive a payment or promise of a payment, or enter or cause the same to be entered in the accounts or records of such committee, in any name other than that of the person or persons to whom it is made."

In addition, pursuant to subdivision (g) §1-c of the Lobbying Act, the term "expense" therein shall mean any expenditure incurred by or reimbursed to the lobbyist for lobbying, but does not include contributions reportable pursuant to article 14 of the Election Law.

Commission staff learned that James B. Crane, II, reportedly made a \$350 donation to Citizens for Morahan on April 8, 2003; a \$4,000 donation to Citizens for Morahan on August 10, 2003; a \$3,000 donation to Friends of Alex Gromack on November 13, 2003; a \$10,000 donation to New Yorkers for Gianaris on July 8, 2003; and a donation to Friends of Balboni on July 21, 2003 (Exhibit 7).

None of the campaign committees described in the invoices above reported receiving contemporary donations from either Duane Reade or Powers Crane & Company at the times involved. None of the campaign committees described in the invoices above reported receiving a contribution from either Duane Reade, Inc. or Powers Crane & Company which would correspond to the invoiced amounts for each set forth in the aforementioned invoices. It is patent that moneys were billed by the lobbying firm to its client without being reported on the bimonthly reports and further there does not appear to be any basis to exclude the same from the required reports.

In addition, if Mr. Crane, personally, merely made campaign contributions to Friends of Alex Gromack, Citizens for Morahan, New Yorkers for Gianaris and/or Friends of Balboni, then these would not be reportable expenses pursuant to the Lobbying Act. However, these invoices serve as evidence that the lobbying firm billed clients in relation to such contributions, and these billings were nowhere disclosed to the Commission.

If Mr. Crane's personal campaign contributions in whole or in part were directly billed to clients of the lobbyist, then such billing was nothing more than additional compensation to the lobbyist from the client, which is a reportable event under the Lobbying Act. As discussed, these billings were not reported.

Therefore for all of the foregoing reasons, the Commission has a basis to refer the lobbyist for four separate violations of the Lobbying Act, namely, the false filings of the four applicable bimonthly reports.

**Recommendation:**

Staff recommends the Commission approve these four referrals for notice of intent to assess civil penalties in connection to the false filing of the following four reports on behalf of client Duane Reade, Inc., namely, the 2003 January/February Lobbyist Bimonthly Report, the 2003 March/April Lobbyist Bimonthly Report, the 2003 May/June Lobbyist Bimonthly Report and the 2003 July/August Lobbyist Bimonthly Report, to be heard at the Public Integrity Commission's next scheduled hearing date for lobbying violations.