Election Board
Michigan Student Assembly

Matthew TALLEY

v.

Hamdan YOUSUF

In the matter of Mr Talley’s election grievance of December 1, 2009,

December 3, 2009

Opinion

Before Election Director WINTER (Presiding), BRUSSTAR, DESHPANDE, and KURDUNOWICZ, Election Board Members. BRUSSTAR delivered the opinion of a unanimous Board.

Introduction

Plaintiff Matthew TALLEY ("Plaintiff") has initiated this action before the Election Board alleging that the Defendant Hamdan YOUSUF ("Defendant") violated the MSA Compiled Code’s ("Code’s") campaign rules by inappropriately sending spam email to over 18,000 students as part of a UM Directory email alias. Plaintiff argues that this alleged violation is unfair to other candidates and requests the maximum punishment as provided for in the Code.

A panel of four Election Board Members conducted a hearing in this matter on December 3, 2009. Election Director WINTER presided, joined by Members BRUSSTAR, DESHPANDE, and KURDUNOWICZ.

Plaintiff’s Case

The Plaintiff holds that Defendant clearly violated the Code §5.G.4.m, disallowing inappropriate and irresponsible use of email and disallowing a candidate from knowingly sending spam email, in the sending of email messages advertising Defendant’s candidacy to the UM Directory group umgraduate.students, which contains almost 19,000 members.

Plaintiff included the email in question with his original brief and submitted a further email between Susan Wilson, Director of the Student Activities and Leadership Office and Will Rhee, IT User Advocate that were entered into evidence. Plaintiff contends, based on the latter of the two emails, that it is clearly established that Plaintiff’s original email was sent to the group umgraduate.students, as alleged, and furthermore that this group was maintained by administrators of the University to effect correct security permissions, with no intention of it serving as an email alias. Plaintiff furthermore contends, based on the content of the former of the two emails, specifically the “paid for by” line, the numerous instructions on how to properly write the Defendant in on the ballot, and the post script asking all the non-Rackham recipients of
the email to write-in the Defendant in spite of their ineligibility, that the email in question not only constitutes an inappropriate and irresponsible use of the email system, but that it also constitutes knowing spam on the part of the Defendant, in violation of §5.G.4.m.

Plaintiff finally contends that an email is defined by a single message sent between two people. Plaintiff holds that because what constitutes an email is never defined within the Code, what constitutes a single violation of §5.G.4.m is predicated on the definition of “email”. Plaintiff further contends, based on his definition of email as presented, that in this case there occurred almost 19,000 distinct violations of §5.G.4.m, meriting the maximum allowable penalty of two demerits per violation, for an aggregate total of nearly 38,000 demerits.

**Defendant’s Case**

The Defendant responds that he did not violate the Code §5.G.4.m and that the email in question is in compliance both with judicial precedent and the provisions of the Code.

Defendant stipulates to sending the email in question to the group um.graduate.students but contends that this does not constitute a violation of §5.G.4.m. Defendant alleges that he sent the email in question not with the intention of furthering his political campaign, but rather as an impartial test of the UM Directory and email system. He states that he did not check if the group were moderated or whether he had permission to send messages to the group prior to his sending, however, he contends that any reasonable person would assume a directory group of such a large volume to be moderated and as such any email sent to it would not be delivered. Therefore the Defendant holds that this action is neither inappropriate nor irresponsible, and did not constitute knowing spam.

Defendant denies Plaintiff’s contention that an email is defined as a message sent strictly between two people. Defendant defines the act of emailing to be one click of the send button, regardless of outcome. As such, Defendant asserts that he, should he hypothetically be found guilty under §5.G.4.m, is entitled to no more than two demerits as he believes this to constitute a single email act.

**Decision of Election Board**

It is the holding of the Election Board that the Defendant is guilty of a violation of the election rules laid out under the Code §5.G.4.m and should therefore be charged with two demerits.

It is well established through the evidence submitted that the Defendant did send an email message to the um.graduate.students UM Directory email alias. This alias is established to have a membership totaling nearly 19,000, resulting in the delivery of that many email messages. Moreover this is an administrative email alias that was never intended to be used for delivery of actual emails and it is plausible that the email is question was the first ever to be sent to this list. The Board believes that the extremely large size of this email alias is enough to establish that a message sent thereto is certainly a bulk email.

While the Defendant asserts that the message he sent was not a campaign email, the Board does not accept this argument. The subject of the email in question read, “4 hours left to vote in the MSA Election!,” the content of the email was devoted entirely to advertising how to vote for Mr YOUSUF, and in fact the email closed with the phrase, “paid for by yousuf@umich.edu,” a phrase required to be placed on MSA campaign material. As though the
first two qualities of the email weren’t enough to qualify this as a campaign email, the final paid for line effectually shows that the Defendant’s intended this email as campaign material. The Board therefore determines that this email was, in fact, unsolicited. Moreover, the Defendant himself recognizes this fact, as the post script of the email in question explicitly solicits votes from students ineligible to vote for the Defendant; it is the determination of the Board that this could not then reasonably be construed as a solicited email.

It is therefore determined that the email in question, as sent by the Defendant was both a bulk email and unsolicited. This is, by definition, spam: unsolicited bulk email. As it was shown in the above paragraph, the Defendant did knowingly intend this as a campaign message, rather than the innocuous test message as he claims, and moreover he did knowingly send it to a large number of individuals who by his own admission are ineligible even to vote in his election. Therefore, the Board finds that the Defendant did knowingly spam, in violation of Code §5.G.4.m.

While the Defendant claims that he is protected from this provision because Code §5.G.4.m explicitly enumerates “sending campaign email to groups or email lists that the sender is not a member” as a violation, to assume that by virtue of email group membership alone the Defendant is absolved of any further obligation under the prior provisions of §5.G.4.m would be fallacious. In fact, the enumerated possible violations under this provision are explicitly not exhaustive, as they are introduced as, “The following actions will also be prohibited under this rule:…” The Board finds that this claim is not valid in the face of violation due to “knowing spam.”

The Board furthermore finds that the Defendant’s claim that he was simply testing the email system, having no expectation that his email would be sent, is insufficient to absolve him of the consequences of clearly violated campaign rules. Even if the Defendant’s claim is true, that he wished to test the email system, in fact he chose to do so with what is blatantly a campaign email, as previously established, is a seeming contradiction from his alleged innocuous intent. The Board did not accept the Defendant’s argument that it was reasonable to expect that the act of sending an email would not at the very least allow for a legitimate possibility for delivery of the message, even if there were doubt as to the moderated status of the email list. Such a “test” of the email system would most certainly be irresponsible at the least, as the proper course of action would be to notify a network administrator, diligence the Defendant made no attempt to undertake.

Finally, the Board determined that an email is defined as a single message sent between one email account and another. The Board held that an email alias (“listserv”) is, by design, a proxy device used to replicate email messages to save the author the laborious task of manually sending many copies of an email with the same message body to multiple recipients. Sending to a listserv of 19,000 members is functionally equivalent to manually specifying 19,000 recipients at the time an email is authored and sent. Whether each copy of the message is sent directly, or after a layer of indirection, is incidental to the fact that 19,000 copies are made and sent. Therefore, it is the determination of the Board that the email sent by the Defendant and received by the Plaintiff constituted a single and distinct email, one of nearly 19,000 sent by the Defendant. Therefore, given that the Board finds the Defendant guilty of violating the Code §5.G.4.m (supra), and given then that the email in question was a single and distinct email, one of nearly 19,000 sent at that time, the Board finds that the stipulated penalty of two demerits should be accessed to the Defendant for his infraction, and moreover that the scope of this judicial action only applies to the single email, as it was just defined, at hand.
Orders

For these reasons,

IT IS ORDERED that Defendant YOUSUF be accessed two (2) demerits in the MSA Fall 2009 election.

Dated this 3rd Day of December, 2009.

Election Board Member BRUSSTAR, joined by Election Director WINTER, and Election Board Members DESHPANDE, and KURDUNOWICZ.