STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

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STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

File No. 2007-154

FINAL DECISION
April 11, 2007

In the Matter of an Appeal of Gerald J. Porricelli and Marianne Porricelli against the Board for Admission of Electors and Registrars of the Town of Greenwich:

PARTIES:

Appellants: **Gerald J. Porricelli**
Marianne Porricelli

Rep. by: Alan Neigher, Esq.
Byelas & Neigher
1804 Post Road East
Westport, CT 06880-5683

Appellees: **Registrars of Voters, Town of Greenwich**
Board of Admission of Electors, Town of Greenwich

Rep. by: John Wayne Fox, Esq.
Town Attorney
Law Department – Town Hall
101 Field Point Road
Greenwich, CT 06836-2540

William Kupinse, Jr., Esq.
Goldstein and Peck, P.C.
1087 Broad Street
P.O. Box 1538
Bridgeport, CT 06601-1538

NOTICE OF FINAL DECISION

This will serve as Notice of the Final Decision of the Elections Enforcement Commission in the above matter, as provided by Section 4-180, General Statutes. At its meeting of April 11 2007, the Commission adopted the report of the hearing officer as the Final Decision of the State Elections Enforcement Commission.

By Order of the State Elections Enforcement Commission.

Lois E. Blackburn
Clerk of the Commission

STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of an Appeal by
Gerald J. and Marianne Porricelli (Appellants) **FINAL DECISION**

Against

Board for Admission of Electors and
Registrars of Voters of the Town of
Greenwich (Appellees) File No. 2007-154

April 11, 2007

FINAL DECISION

The above-captioned matter was heard on February, 5, 2007 as an appeal pursuant to Connecticut General Statutes §§ 9-31*l*(b) and as a contested case pursuant to Chapter 54 of the Connecticut General Statutes and Section 9-7b-35 of the Regulations of Connecticut State Agencies. The Appellants, represented by Alan Neigher, Esq., the Board for Admission of Electors, represented by John Wayne Fox, Esq., and the Registrars of Voters, represented by William Kupinse, Esq., appeared, stipulated to certain facts and exhibits, and presented further testimony, exhibits and argument on the appeal.

After consideration of the entire record, the following facts are found and conclusions of law are made:

1. On January 17, 2007, Gerald J. Porricelli and Marianne Porricelli (hereinafter "the Appellants") filed a Notice of Appeal pursuant to Conn. Gen. Stat. § 9-31*l*(b) with the State Elections Enforcement Commission (hereinafter "Commission") from the January 5, 2007 decision of the Board for Admission of Electors of the Town of Greenwich (hereinafter "the Board").

2. The Board below heard the appeal of the Registrars of Voters' (hereinafter "Registrars") decision to remove the Appellants as electors on October 30, 2006, and issued a decision on January 5, 2007, upholding the Registrars' decision to remove Appellants as electors in the Town of Greenwich for lack of bona fide residence.

3. The Appellants contend that (1) the Board decision exceeded time limitations imposed by Conn. Gen. Stat. § 9-31*l*(a)(4); (2) the Board acted unreasonably, arbitrarily or illegally, or abused its discretion in concluding that the Appellants should be removed from the voter rolls in Greenwich; and (3) that the Board's decision was clearly erroneous as a matter of law with respect to the doctrines of

municipal estoppel and *res judicata*, and urged that the Commission order the Appellants reinstated as registered voters in the Town of Greenwich.

4. The procedure outlined in Conn. Gen. Stat. § 9-31*l*(b), although called an appeal, actually requires a de novo hearing concerning the qualifications of the Appellants to be or remain electors: The statute provides that the hearing is a contested case under Chapter 54, the Uniform Administrative Procedures Act. The Commission concludes that the hearing is de novo, and that the Commission can rely on, but is not limited to, the record of the hearing below. The Commission also takes administrative notice of File No. 2004-174, and the evidence taken in that matter.

5. Connecticut General Statutes § 9-31*l* provides, in pertinent part:

> (a)(1) A person who is denied admission as an elector may appeal a decision of an admitting official of a town concerning the right of such person to be or remain an elector. Any such appeal shall be made to the registrars of voters of such town, except that if the admitting official who made such decision is a registrar of voters, the appeal shall be made to the board for admission of electors of such town.
>
> (2) Notice of an appeal shall be in writing and delivered to the registrars or to the board for admission of electors. Within seven days after receipt of a notice of appeal, the registrars or the board, as the case may be, shall give written notice of the time and place where such appeal will be heard to the appellant and to the admitting official whose decision is the subject of the appeal. Such appeal shall be heard within twenty-one days after notice of the appeal is delivered to the registrars or the board. Neither a registrar whose decision is the subject of the appeal nor a registrar who is an appellant shall be a voting member of the board which hears the appeal.
>
> (3) The registrars or the board may receive sworn testimony and any other evidence relating to the qualifications of such person to be or remain an elector.
>
> (4) Within seven days after hearing an appeal, the registrars or the board shall render a decision and shall send written notice of the decision to the appellant and the admitting official whose decision was the subject of the appeal. . . .

6. It is found that on March 6, 2006, the Appellants received a letter from the Appellee Registrars that challenged their right to vote in Greenwich on the basis of non-residence, pursuant to Conn. Gen. Stat. §9-43. On or about April 13, 2006, the Appellants each submitted a sworn application for retention of electoral privileges to the Appellee Registrars. On or about May 2, 2006, the Appellants each received a letter from the Appellee Registrars informing them that the Appellee Registrars agree that they do not maintain a residence in the Town of Greenwich and have been sent notice of removal for non residence in the manner provided for in Connecticut General Statutes § 9-43, and each Appellant had been placed on the inactive registry list in the Town of Greenwich.

7. It is found that the Appellants appealed the decision of the Appellee Registrars to the Appellee Board on September 25, 2006. The Commission notes that the statutory procedure does not specify a time limit within which a person who is denied admission as an elector must file an appeal to the Board for Admission of Electors, and that such appeal was not filed for approximately four months.

8. It is found that the Appellee Board heard the appeal from the Registrars of Voters decision on October 30, 2006, and met on November 29, 2006 in executive session to discuss the appeal. It is further found that all parties had agreed to *some* waiver of the seven day time period for the Board to render a decision, but that the parties now disagree as to whether a time limit was imposed on such waiver. It is found that the Board's decision was rendered on January 5, 2007.

9. A threshold question is whether the seven day time period for the Board below to render a decision implicates subject matter jurisdiction. If so, and if the Board failed to meet this statutory deadline, that failure divested the Board's ability to render a decision, and as such, would divest the Commission of authority to decide this matter. The Commission concludes that if the time period implicates subject matter jurisdiction, it could not be waived. Williams v. Commission on Human Rights and Opportunities, 257 Conn. 258 (2001).

10. Appellants appear to argue that the time limit was mandatory and because the Board failed to meet it, the Board was divested of jurisdiction over the matter and its decision rendered a nullity. Appellants rely on Board of Police Commissioners v. Freedom of Information Commission, 199 Conn. 451 (1986), which relies entirely upon the rationale in Zoning Board of Appeals v. Freedom of Information, 198 Conn. 498 (1986), where our Supreme Court held that the Freedom of Information Commission's failure to render a decision within thirty days after a hearing, as required by statute, rendered the decision invalid. Those decisions are, however, inapposite, as they were limited to the particular statutory provisions for hearings required under Freedom of Information Act, which were subsequently legislatively extended to one year.

11. The Commission concludes that a more appropriate analysis is the approach taken in Williams v. Commission on Human Rights and Opportunities, et al, 257 Conn. 258 (2001), which distinguished the issue of subject matter jurisdiction from the issue of whether statutory time frames were mandatory or directory in certain contexts. "[T]he question of whether a time limitation is subject matter jurisdictional is a question of statutory interpretation. ... Thus, we look to whether the legislature intended the time limitation to be jurisdictional. The legislative intent is to be discerned by reference to the language of the statute, its legislative history and surrounding circumstances, the policy the limitation was designed to implement, and the statute's relationship to existing legislation and common law principles governing the same subject matter. ...In light of the strong presumption in favor of jurisdiction, we require a strong showing of a legislative intent to create a time limitation that, in the event of noncompliance, acts as a subject matter jurisdictional bar. Id. at 267.

12. With respect to the time limitation in question, it is concluded that neither the language of the statute nor the legislative history indicates that the legislature intended it to be a jurisdictional bar. The statute does not provide for a remedy if the deadline is not met, thus suggesting that no such remedy is intended. Specifically, Section 9-31*l* does not provide that failure to adhere to the time limit renders the Board's decision invalid. However, unlike subsection (b) of § 9-31*l*, which allows the parties or the Commission to request an extension of the sixty day period for the Commission to render a decision, similar language is not contained in Conn. Gen. Stat. § 9-31*l*(a) regarding the Board's decision.

13. It appears that the seven day limitation was provided as a mechanism to expedite the matter so that the important issue of elector status in a particular town could be resolved quickly. The Commission takes note, however, of the practical difficulty of the requirement to render a decision within seven days.

14. The Commission concludes that the failure to comply with the seven day deadline for rendering a decision following a hearing did not deprive the Appellee Board of subject matter jurisdiction. The Commission further concludes that the time frame is mandatory, but that if the passage of the deadline did not deprive the Board of subject matter jurisdiction, as the Commission concludes it did not, the deadline could arguably be waived by the parties. Williams, supra at 269-70.

15. It is found that all parties had agreed to *some* waiver of the seven day time period for the Board to render a decision, but that the parties now disagree as to whether a time limit was imposed on such waiver. The Appellants acknowledge that they agreed to an extension at least up to and including December 20, 2006.

16. It is found that the minutes of the October 30, 2006 Appellee Board hearing indicate that "all parties agreed to a waiver of the statutory time limits for a hearing and a decision on the matter." It is found that the record does not support the limited waiver asserted by the Appellants.

17. The Board met again on November 29, 2006 in executive session to discuss a proposed memorandum of decision. It is found that the Board's decision was adopted at a meeting on January 5, 2007, by a 3-1 vote.

18. It is found that the delay was not extreme, even absent the waiver, and that the Appellants did not suffer any prejudice from the Board's delay in rendering the decision below. It is further found that between December 20, 2006, the date agreed to by Appellants, and the Board's decision on January 5, 2007, there was no election or opportunity to vote available to the Appellants. Furthermore, during the course of the proceeding below, steps were taken to preserve the ability of the Appellants to cast a provisional or challenge ballot for the November 2006 election.

19. The parties have previously entertained an appeal under Conn. Gen. Stat. § 9-31*l*, before the new authority was granted to the Commission. Notably, that decision was not made within a seven day period following hearing, which was held on April 10, 2003: The Board requested in the 2003 proceeding that the parties agree to a thirty

day extension of the seven day timeline within which to render a decision, which was agreed to. In that proceeding, the parties also agreed to waive the 21 day period within which the statute proscribed that the hearing was to be held.

20. It is concluded that the failure to render a decision by the Appellee Board within seven days of the hearing, under the facts and circumstances of this case, does not invalidate the decision of the Board.

21. The parties have a long history: On or about May 25, 2001, the Appellants first received notice from the Appellee Registrars that challenged their ability to remain electors in Greenwich on the basis of lack of bona fide residence. In April 2003, the Appellant Board previously determined that the Appellant Registrars of Voters had not complied with procedural notice requirements for removing the Appellants as electors in the Town of Greenwich. The Appellants voted in the November 2003 election in Greenwich, and Gerald Porricelli was elected to the Greenwich Representative Town Meeting in 2003, and 2005.

22. On or about January 2004, the Appellants returned canvas cards sent to them by the Appellee Registrars. On or about August 2004, the Appellee Registrars filed a complaint with the Commission alleging that the Appellants knowingly signed a false statement on the canvas card.

23. Appellants argue that a prior 2003 Board appeal and a prior Commission case, Complaint of Sharon B. Vecchiola and Veronica B. Musca, Greenwich, File No. 2004-174, conclusively adjudicated that the Appellants were bona fide residents of Greenwich.

24. On or about December 19, 2002, the Porricellis filed an appeal with the Board, which ordered them reinstated to the voter list or about May 16, 2003, because the Registrars had not complied with the proper notice procedures required for removal. As stated in the Board's 2003 opinion: "The issue at this juncture is not whether the Porricellis were properly admitted to the registry of electors, but whether they were properly removed from such list. . . . ***The Board need not address [the issue of bona fide residence] at this point*** . . ." [Emphasis added.]

25. In Commission File No. 2004-174, the issue was whether the Porricellis provided false statements on their canvas cards when they confirmed that they resided at 9 Hillcrest Park Road, Greenwich. Their subjective belief was relevant in that matter to whether or not they made a false statement.

26. The Commission concludes that the Appellants' residence was not conclusively adjudicated a bona fide residence within the Town of Greenwich in either the 2003 Board appeal or the 2004 Commission decision. In fact, Appellants persuasively argued in File No. 2004-174, that the Commission had no jurisdiction to determine whether the Porricellis were bona fide residents and electors at that time. They cannot now successfully argue that the Commission conclusively determined that the Porricellis were bona fide residents in such proceeding, and that such finding is entitled to *res judicata*. The Commission lacked the statutory authority to make such

a determination at that time. The Commission's Final Decision in File No. 2004-174, adopted on January 12, 2005, expressly states at paragraph 12: "The State did not claim, and the Commission does not have, the statutory authority to order the Registrars of Voters to remove an elector's name from the registry list."

27. Between the disposition of Commission File No. 2004-174 and the present appeal, Public Act 05-235 was enacted, specifically Sections 6 and 7, which *granted* the Commission the authority to hear appeals from Boards for Admission of Electors and Registrars of Voters decisions, and determine who can be or remain an elector according to such procedures. This is the first such proceeding under the new statute.

28. It is further found that the parties to the earlier Commission proceeding were not identical to the parties in the present case. The Commission therefore concludes that neither res judicata nor collateral estoppel applies to the issue before the Commission; specifically whether the Appellants are qualified to be or remain electors of the Town of Greenwich.

29. The Commission further concludes, however, that with respect to Commission File No. 2004-174, The Commission did make a finding that the Appellants relied upon a representation from the Greenwich Registrars Office prior to their move in July 2000 that their new address at 9 Hillcrest Park Road was a Greenwich address for voting purposes, and that the Appellants reasonably believed that they were bona fide residents of Greenwich when they signed their confirmation cards. The Commission is therefore, bound by those factual finding in this proceeding.

30. It is concluded that the issue of the Appellants' bona fide residence was not determined in either the 2003 proceeding before the Appellee Board, nor File No. 2004-174 before the Commission. Accordingly, the Appellants' appeal on the basis that the Appellee Board was clearly erroneous with respect to the doctrine of *res judicata* is without merit.

31. Article Sixth of the Constitution of the State of Connecticut, as amended by Article IX of the Amendment to the Constitution of the State of Connecticut, provides:

> "Sec. 1. Every citizen of the United States who has attained the age of eighteen years, who is a ***bona fide resident*** of the town in which he seeks to be admitted as an elector and who takes such oath, if any, as may be prescribed by law, shall be qualified to be an elector." (Emphasis added.)

32. Connecticut General Statutes §9-12 provides:

> (a) Each citizen of the United States who has attained the age of eighteen years, and who is a ***bona fide resident*** of the town to which he applies for admission as an elector shall, on approval by the registrars of voters or town clerk of the town of residence of such citizen, as prescribed by law, be an elector, except as provided in subsection (b) of this section. . . . [Emphasis added.]

33. It is found that the Appellants own a home at the address known as 9 Hillcrest Park Road, Old Greenwich, Connecticut, and that they purchased said property in the summer of 2000. Prior to that time, they resided at Cross Ridge Road, Greenwich since the 1970's.

34. It is found that the property at 9 Hillcrest Park Road, Old Greenwich is divided by the boundary line between the municipalities of Greenwich and Stamford.

35. It is found that approximately ninety percent of the property at 9 Hillcrest Park Road, Old Greenwich lies physically within the municipality of Stamford, and that the dwelling unit at said address is located entirely within the boundaries of the Town of Stamford.

36. It is found that the Appellants pay property taxes to both municipalities, and pay approximately 90% of such taxes to Stamford and approximately 10% of such taxes to Greenwich.

37. It is found that when Appellants wished to build an addition to their home in 2005, they sought and obtained a building permit from the City of Stamford.

38. It is found that the portion of the property at 9 Hillcrest Park Road that lies within the Town of Greenwich is the driveway and mailbox, and that the property is accessed through the Greenwich side of the property. No portion of the dwelling unit is located within the Town of Greenwich.

39. Neither the Connecticut Constitution nor Title 9 of the General Statutes define "bona fide resident." In the absence of a statutory definition, the Commission will apply well settled rules of statutory construction to construe its meaning. The meaning of the term "bona fide resident" is not plain and unambiguous, and cannot readily be established solely by the meaning of the term and its relationship to other statutes. Accordingly, the Commission will look at any judicial gloss placed on the term, and may consider extratextual evidence to ascertain its meaning, pursuant to Conn. Gen. Stat. § 1-2z.

40. Black's Law Dictionary, 6th Ed. (1990) defines "residence" as a *"[p]lace where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one's home is; a dwelling house. . . .* Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently. . . . Residence implies something more than mere physical presence and something less than domicile." (Emphasis added.)

41. Black's further defines "*bona fide* residence" as "residence with domiciliary intent, i.e., a home in which the party actually lives." (Citation omitted.)

42. In Hackett v. The City of New Haven, 103 Conn. 157 (1925), our Supreme Court was faced with the issue of whether an individual was a "resident elector" of New Haven as required by the charter of the City of New Haven. The court also

determined the meaning of the word "resident" when used in the context of voter eligibility and whether "resident," when used in that context, had the same meaning as "resident" when used in the term "resident elector." The court held that it did not; that "resident" had two different meanings depending on the context in which it was used.

According to the court, although the term "residence" is not always equivalent to domicile, in statutes related to voting, "residence" means domicile unless the contrary is indicated in the statute. Id., 165. Whereas, "resident," as used in the city charter's term "resident elector," appears to mean the actual, bona fide residence of an individual. Id., 166, 171. Put another way, the good faith home that the individual lives actually in. Id. The Court upheld the trial court's holding that the appellant was not a "resident elector" of the City of New Haven and concluded that he was required to forfeit his elective office in New Haven because he was actually a resident of East Haven, where he lived with his family. Id., 172.

43. In accordance with Hackett, the Commission concludes that with respect to qualifying as an elector pursuant to Section 9-12, General Statutes, bona fide residence means domicile.

44. In addition, in prior cases construing the term, the Commission has concluded that bona fide residence means a person's genuine domicile: More specifically, that place where a person maintains a true, fixed, and principal home to which he, whenever transiently relocated, has a genuine intent to return. See Complaint of Nancy Rossi, West Haven, File No. 2006-109. There are other factual circumstances that can affect a determination of residency, such as whether an individual has more than one residence, or is homeless, but such factors are not present here.

45. However, the Commission has never previously determined the application of the bona fide residency requirement in the context of an elector whose property is split between two municipalities.

46. The parties reference Baerst v. State Board of Education, 34 Conn. App. 567 (1994), which analyzed the issue of residency for purposes of a public school education ("constellation of interests" test) and the legislative response to such decision. The Appellants urge the Commission to adopt the "constellation of interests" test to determine residency. The Board for Admission of Electors below adopted the policy codified in Conn. Gen. Stat. § 10-186(a), which provides that if a child residing in a *dwelling* located in more than one town in this state shall be considered a resident of each town in which the dwelling is located and may attend school in any one of such towns.

47. The Commission agrees with the ultimate conclusion of the Board, but under a somewhat different analysis. The Commission concludes that the Appellee Board's determination that the dwelling is the predominant factor in a determination of residency for voting purposes is correct. However, the Board's adoption of a standard cannot bind all other municipalities in the state. The legislature could have, but did not, extend this rationale concerning dwelling units located in more than one

town for educational purposes to voting. The Commission further finds that the policies behind a determination of residency for public school education are not identical to those for a determination of bona fide residency for purposes of voting, and that the same conclusion or analysis is not compelled.

48. Other jurisdictions have addressed these facts and support the Commission's conclusion that the dwelling unit is the predominant consideration in determining residency for purposes of voting.

49. In an election protest case, Dukes v. Redmond and Florence County Board of Canvassers, 357 S.C. 454, 593 S.E.2d 606 (2004), the South Carolina Supreme Court held that the dwelling of two voters who owned two contiguous lots was outside the city and such voters were ineligible to vote in the city election. In facts similar to the instant case, the court found that "[t]heir actual residence is located on the back lot which is outside the city and comprises about four-fifths of the total property. The front lot, which is in the city, borders on the road and is about fifty feet deep." The South Carolina court expressed agreement with In re: Davy, 281 A.D. 137, 120 N.Y.S.2d 450 (N.Y.App. Div. 1952), that a person's residence is the part of his property on which the dwelling is actually located, and concluded that the two voters were not eligible to vote in the city election. In In re: Davy, The New York court also concluded that residence was equivalent to domicile, and that ordinarily a person's domicile or home is the building in which he or she lives and carries on the main activities of a home such as eating, sleeping and receiving visitors, and that land, as such, would not be spoken of as a home in common speech. The court also found that the intent of the voter to remain voters in one town was not controlling and that a voting residence does not exist as distinguished from an actual residence.

50. In Hobbie v. Vance, 292 Ala. 367, 294 So.2d 743 (1974), the Supreme Court of Alabama, a candidate was disqualified from the ballot for lack of residence. The Court held that the candidate's house was firmly within one district and he did not qualify for application of the liner statute, which would have allowed him to select to register in the adjacent district, in which he preferred to register. The Court noted that no one had been adjudged a liner unless the boundary actually split through the house where he lived. The candidate's home, residence and domicile were all clearly within one district, and he was not qualified to be a candidate in the adjacent district, into which his property extended.

51. In the absence of "liner" statutes, which Connecticut does not have for voting purposes, the general rule under the common law had been where the individual rests his or her head at night, or the "bedroom rule," and not the square footage rule utilized by the Registrars. See Abington v. North Bridgewater, 40 Mass. 170, 179 (1830): "[I]f a man has a dwellinghouse, situated partly within one jurisdiction and partly in another, . . .he shall be deemed an inhabitant within that jurisdiction, within the limits of which he usually sleeps." See also Whitehouse v. Commissioner of Internal Revenue, 963 F.2d 1 (1st Cir. 1992), Blaine v. Murphy, 265 F. 324 (D. Mass 1920); 25 Am. Jur. 2d Domicil §29 (1996).

52. In Scott v. Monroe, F. Supp. 3d (D. Conn. 2004), the federal district court concluded that there is no constitutional right to vote in a particular town. "Our cases have uniformly recognized that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders." Holt Civic Club v. City of Tuscaloosa, 439. U.S. 60, 68-69 (1978) (cited by Romeu v. Cohen, 121 F. Supp. 2d 264, 276 (S.D.N.Y. 2000) See also Ellis v. Coffee County Bd. Of Registrars, 981 F.2d 1185, 1192 (11th Cir. 1993) ("We specifically do not find that the [plaintiffs] were denied their constitutional right to vote; they merely were denied entitlement to vote in a county in which they did not live as decided by the county commissioners statutorily eligible to make the determination of voter eligibility based on the elector's residence.") Similarly, in the case before this court the plaintiff has not been denied the right to vote in the town in which she resides. Rather, the redrawing of the town line placed defendant's residence in Monroe, and provides her with the right to vote in Monroe, but not in Easton. Because the right to vote is contingent on residency requirements, this court sees no constitutional violation in restricting the plaintiffs voting rights to participating in elections within the district in which she now resides. Accordingly, plaintiff's voting rights were not abridged by the change in her residency."

53. The Appellants urge that Fine Homebuilders, Inc. v. Diane Perrone, et al, 98 Conn. App. 852 (2006), supports their contention that the entirety of a property should be considered in determining bona fide residence. The Commission concludes that the definition of "abode" for service of process (process left at front gate) is distinguishable from bona fide residence for voting. Abode service is calculated to provide reliable notice of a pending action, as distinguished from a substantive determination of bona fide residence to establish one's qualifications as an elector.

54. The Appellants argue that they would have nowhere to vote if the Commission concludes that they are not bona fide residents of Greenwich, because they claim that Exhibit O to the appeal stands for the proposition that the Stamford Registrar of Voters does not recognize 9 Hillcrest Park Road as a Stamford residence. In fact, it is found that the letter from the Stamford Registrar of Voters simply states that the Porricellis have never been registered to vote or attempted to register to vote in Stamford.

55. The Commission concludes that the Stamford Registrars of Voters would have to accept the Appellants' properly completed applications to register to vote in the event that the Commission concludes that the Porricellis are bona fide residents of Stamford.

56. It is found that the Appellee Registrars attempted to resolve issues with similarly situated electors with properties contiguous with the Stamford and New York borders, and that the Appellants were not singled out by the Appellee Registrars.

57. The Appellants urge that the Commission conclude that 9 Hillcrest Park Road is a bona fide Greenwich address. The argument misses the mark: Conn. Gen. Stat. § 9-12 and the Constitution require that to be an elector an individual must be a bona fide resident of the municipality to which the individual makes application. The election

laws do not reference a "bona fide residence address." The right to vote is derivative of residence within the borders of a town, not a mailing address. Addresses do not become electors, residents do. To conclude otherwise would confer upon postal authorities the ability to determine the right to vote by simply changing post office addresses.

58. The Appellants final argument is that they detrimentally relied on the advice of a clerk in the Greenwich Registrars of Voters office that 9 Hillcrest Park Road was a resident address within the Town of Greenwich, and assert that the Town of Greenwich is now estopped from asserting that the Appellants are not bona fide residents on that basis.

60. The Appellee Registrars respond that even if the Commission has equitable authority, it cannot be used to grant something *ultra vires*, and that the Registrars and the Commission are limited by the Constitutional and statutory requirement that the Appellants be bona fide residents. The Commission agrees.

61. The Appellants' stress the unique and exceptional facts of this case, but in so doing, is essentially asking the Commission, based upon equitable considerations, to make an exception to the requirement that an individual be a bona fide resident of the town to be an elector. The Commission concludes that it lacks such equitable powers.

62. It is found that even if principals of estoppel apply, there is no evidence in the record that the clerk in the Registrars' office intended to induce the Appellants to buy the property at 9 Hillcrest Park Road – a finding essential to the success of Appellants' estoppel claim.

63. It is further found that the Appellants failed to prove that their reliance on the statement made by the clerk in the Registrars' office was reasonable. Given the Appellants' claim that they had suspended the closing on the property at 9 Hillcrest Park Road to obtain a determination from the Registrars, it is suspect, at best, that they relied on an oral statement from a clerk in the office and did not seek a written opinion outlining the specific facts and ultimate conclusion from the Registrars themselves.

64. It is also found that the property at 9 Hillcrest Park Road was purchased by the Appellants with the knowledge that the majority of the property was physically located in Stamford. Mr. Porricelli is an attorney admitted to practice in Connecticut, and could have better preserved the issue if he intended it to be a condition of his purchase of the property, for example, by requesting the opinion in writing. It is found that the Appellants did not exercise the due diligence required to assert the doctrine of estoppel. Under the facts of this case, it is found that it was not reasonable to rely on the oral advice of a clerk, and not seek a written opinion of the Registrars of Voters.

65. It is further found that the Appellants failed to prove that they have sustained a substantial loss, given the conclusion that they are eligible to vote in another jurisdiction. See also Scott v. Monroe, supra, and Cortese v. Planning and Zoning Board of Appeal of the Town of Greenwich, 274 Conn. 411 (2005).

66. It is found that the Appellants reside in Stamford and do not reside in Greenwich. It is further found that the Appellants are bona fide residents of Stamford and are not bona fide residents of Greenwich. To the extent that the question presented is a mixed question of law and fact, it is also concluded that the Appellants are bona fide residents of Stamford and are not bona fide residents of Greenwich, within the meaning of Conn. Gen. Stat. § 9-12, Article Sixth of the Connecticut Constitution and other applicable state election laws.

ORDER

The following is ordered in accordance with Sections 9-7b(a)(3)(E) and 9-31*l* of the General Statutes, on the basis of the record in the above-captioned case:

1) The Appellants are adjudged to be bona fide residents of Stamford for the purposes of being admitted as electors, and not to be bona fide residents of Greenwich for such purpose;
2) The decision of the Appellee Board is sustained, although on different grounds, as described above;
3) The Registrars of Voters are ordered to remove the Appellants' names from both the active and inactive voter registry lists and any party enrollment list of the Town of Greenwich.

Stephen F. Cashman, Chairman
By Order of the Commission

Dated this 11th day of April, 2007.

The foregoing is hereby certified to be a true and correct copy of the Final Decision of the State Elections Enforcement Commission.

Lois E. Blackburn
Clerk of the Commission

I certify the proceeding Final Decision was sent to Counsel for the Appellants Alan Neigher, Esq. Byelas & Neigher, 1804 Post Road East, Westport, CT 06880-5683; and Counsel for the Respondents William J. Kupinse, Jr., Esq. Goldstein and Peck, P.C., 1087 Broad Street, P.O. Box 1538, Bridgeport, CT 06601-1538 and John Wayne Fox, Esq. Town Attorney, Law Department, Town Hall, 101 Field Point Road, Greenwich, CT 06836-2540, First-Class Mail with delivery confirmation tracking and receipt and by certified mail on April 11, 2007.

Lois E. Blackburn
Clerk of the Commission