

MAR 02 2009

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT
COMMISSION

In the Matter of a Complaint by
Stephaine DeForest, Southbury

File No. 2008-224

**AGREEMENT CONTAINING CONSENT ORDER AND PAYMENT
OF A CIVIL PENALTY FOR VIOLATIONS OF CONNECTICUT
GENERAL STATUTES §§ 9-23g, 9-140, 9-172, 9-359 and 9-360.**

This agreement, by and between Daniel Jarvis Brown of New York City, Borough of Manhattan, State of New York (hereinafter referred to as the Respondent) and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Complainant is the Deputy Registrar of Voters in the Town of Southbury and filed a complaint alleging that the Respondent completed an absentee ballot, re-registered to vote and voted by absentee ballot in October 2008 for the November 4, 2008 Presidential Election in Southbury, Connecticut, when he was not a bona fide resident of Southbury, Connecticut.
2. Connecticut General Statutes § 9-12 provides, in pertinent part:
 - (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.]
3. "*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. *Complaint of Nancy Rossi*, West Haven, File No. 2006-109; *In the Matter of an Appeal of Gerald and Marianne Porricelli*, File No. 2007-154.
4. The Respondent's family home was at 1115 Bullet Hill Road in Southbury, Connecticut, and he first registered at such address in 2002. He attended college in Maine and law school in New York state, returning to his family home or maintaining it as his permanent residence during the period of his education.
5. Respondent graduated from law school in the spring of 2008. By then, his mother's family had moved from Southbury to Arkansas, and the Respondent's family home was sold in July 2008.

6. The Respondent has no connection with the individual who presently owns and resides in his former home at 1115 Bullet Hill Road in Southbury, Connecticut.
7. The Respondent moved to an apartment in New York, New York on or about September 19, 2008, which is his primary residence, and has been since September 19, 2008.
8. It is concluded that the Respondent's bona fide residence for voting purposes is in New York, New York.
9. The Respondent maintains that he voted by absentee ballot in Connecticut, using his former address, because he believed that he did not have time to register to vote in New York. Further, he maintains that he believed he could vote in Southbury because his driver's license and motor vehicle were still registered at his former address.
10. The voter registration deadline in New York for the November 2008 election was October 10, 2008. The Respondent did not attempt to register to vote in New York.
11. The Respondent's operator's license and motor vehicle Connecticut registration address do not confer bona fide residence status upon him for voting purposes. In fact, Respondent was required to change such information with the Connecticut Department of Motor Vehicles, based upon his relocation. *See Conn. Gen. Stat. §§ 14-45 and 14-17a.*
12. On or about October 7, 2008, Respondent filed an Application for Absentee Ballot, ED-3 form, where he requested that an absentee ballot be sent to him. The application contained two addresses: 1115 Bullet Hill Road in Southbury and 101 West 24th St., Apt 9E in New York.
13. Upon Respondent's request for absentee ballot, the Complainant verified that Respondent was on the inactive voter list and sent him a voter registration card. He had previously been placed on the inactive voter list earlier in 2008, when the canvas revealed that he no longer lived in Southbury.
14. On or about October 16, 2008, the Respondent completed a voter registration application and submitted it to the Registrars of Voters of the Town of Southbury, Connecticut. The resident address provided was 1115 Bullet Hill Road in Southbury.
15. Due to the imminence of the voter registration deadlines (October 21, 2008) and the proximity to the Presidential Election (November 4, 2008), the Complainant, on or about October 20, 2008, sent the Respondent a confirmation letter to his Southbury address and an absentee ballot to the New York mailing address.
16. On or about October 23, 2008, the confirmation letter sent by the Complainant to the Respondent at 1115 Bullet Hill Road, Southbury, was returned by the United States Postal Service as "*Daniel Jarvis Brown Moved Left No Forwarding Address.*" Complainant contacted Respondent at the telephone number he provided on his application for absentee

ballot and Respondent informed her that 1115 Bullet Hill Road in Southbury was his residence address.

17. Complainant proceeded to send another confirmation letter to the Respondent. By the time the second confirmation was returned undeliverable, he had already voted in the November 4, 2008 Presidential Election in Southbury, Connecticut by absentee ballot.
18. Connecticut General Statutes § 9-23g provides, in pertinent part:
 - (a) In addition to the procedures for admission of electors under sections 9-19b, 9-19c, 9-19e, 9-20 and 9-31, any person may apply to a registrar of voters of the town of his residence for admission as an elector in accordance with the provisions of this section and section 9-23h.
 - (b) The Secretary of the State shall prescribe, and provide to registrars of voters, town clerks and voter registration agencies, as defined in section 9-23n, application forms and other materials necessary to complete such application and admission process. The Secretary of the State, registrars of voters and town clerks shall provide a reasonable number of such forms and materials to any elector who requests such forms and materials. The secretary shall also, in the course of his elections duties, prepare instructions and related materials describing procedures for such application and admission process and shall provide the materials to registrars of voters and town clerks.
The application shall contain the information required under section 9-23h. All statements of the applicant shall be made under the penalties of perjury. The application for admission as an elector shall include a statement that (1) specifies each eligibility requirement, (2) contains an attestation that the application meets each such requirement, and (3) requires the signature of the applicant under penalty of perjury. Nothing in this section or section 9-23h shall require that the application be executed in the state. . . . The completed application may be mailed or returned in person to the office of the registrars of voters or the office of the town clerk of the applicant's town of residence or a voter registration agency. . . . Such application form shall be provided by or authorized by the Secretary of the State. . . .
19. It is concluded that by completing a voter registration application stating that he lived at 1115 Bullet Hill Road, Southbury, Connecticut, when it was not his bona fide residence, the Respondent violated Connecticut General Statutes § 9-23g.
20. Connecticut General Statute § 9-140 provides:
 - (a) Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. The municipal clerk shall not distribute with an absentee ballot application any material which promotes the success or defeat of any candidate or

referendum question. The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application. **The application shall be signed by the applicant under the penalties of false statement in absentee balloting** on (1) the form prescribed by the Secretary of the State pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word "by" and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application. [Emphasis added.]

21. Connecticut General Statutes § 9-359 provides, in pertinent part:

Any (1) person who executes an absentee ballot for the purpose of informing any other person how he votes, or procures any absentee ballot to be prepared for such purpose, (2) municipal clerk or moderator, elector appointed to count any absentee ballot or other person who wilfully attempts to ascertain how any elector marked his absentee ballot or how it was cast, (3) person who unlawfully opens or fills out, except as provided in section 9-140a with respect to a person unable to write, any elector's absentee ballot signed in blank, (4) person designated under section 9-140a who executes an absentee ballot contrary to the elector's wishes, or (5) person who wilfully violates any provision of chapter 145, shall be guilty of a class D felony.

22. By completing an absentee ballot application stating that he lived at 1115 Bullet Hill Road, Southbury, Connecticut, when he did not, the Respondent violated Conn. Gen. Stat. § 9-140 and 9-359.

23. Connecticut General Statutes §9-172 provides:

At any regular or special state election any person may vote who was registered on the last-completed revised registry list of the town in which he offers to vote, and he shall vote in the district in which he was so registered; provided those persons may vote whose names are restored to the list under the provisions of section 9-42 or whose names are added on the last weekday before a regular election under the provisions of section 9-17.

Each person so registered shall be permitted to vote **if he is a bona fide resident of the town and political subdivision holding the election** and has not lost his right by conviction of a disfranchising crime. Any person offering so to vote and being challenged as to his identity or residence shall, before he votes, prove his identity with the person on whose name he offers to vote or his **bona fide residence** in the town and

political subdivision holding the election, as the case may be, by the testimony, under oath, of at least one other elector or by such other evidence as is acceptable to the moderator. [Emphasis added.]

24. Connecticut General Statutes § 9-360 provides, in pertinent part:

Any person not legally qualified who fraudulently votes in any town meeting, primary or election in which he is not qualified to vote, and any legally qualified person who, at such meeting, primary or election, fraudulently votes more than once at the same meeting, primary or election, shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disfranchised. . . .

25. It is found that the Respondent was not legally qualified to vote in the November 4, 2008 election in Southbury, Connecticut, since he was not a bona fide resident of Southbury, Connecticut, and improperly voted in such election. He was, in fact, a resident of New York at the time.

26. It is concluded that by voting in the November 4, 2008 Presidential Election in the Town of Southbury, the Respondent violated Connecticut General Statutes §§ 9-172 and 9-360.

27. Connecticut General Statutes § 9-7b(a)(2) provides that the Commission may assess a civil penalty of two thousand dollars for each violation of Conn. Gen. Stat. §§ 9-23g, 9-140 and 9-172. Connecticut General Statutes § 9-7b(a)(2)(C) also provides that the Commission may assess a \$2,000 civil penalty per offense against any individual the Commission finds to have (i) improperly voted in any election, primary or referendum and (ii) not been legally qualified to vote in such election, primary or referendum. The Commission may also refer evidence of a violation of the state election laws to the Chief State's Attorney's office, United States Attorney or United States Department of Justice, pursuant to Connecticut General Statutes § 9-7b(a)(7) and (11).

28. Regulations of Connecticut State Agencies § 9-7b-46(a) provides:

The Commission is authorized to act in accordance with the powers granted to it under Section 9-7b and 9-369b and Chapter 150 of the General Statutes. *Except in circumstances when its investigation reveals significant evidence of a criminal violation or violations of the state election laws within its jurisdiction, the Commission shall attempt to resolve cases pending before it by use of its civil and administrative authority, including but not limited to, the issuance of orders necessary to secure compliance with such laws.* [Emphasis added.]

29. The Commission considers voting in a jurisdiction other than the one where the voter maintains his bona fide residence to be a serious offense, but is utilizing its civil authority due to what it perceives as the lack of intent on the part of the Respondent to commit a crime. Respondent acknowledges that the above violations are serious and subject him to possible criminal penalties. In determining whether or not to refer the

Respondent to the Chief State's Attorney, United States Attorney or United States Department of Justice for criminal prosecution, the Commission has carefully considered that the Respondent has no prior cases with the Commission and the Respondent's lack of specific knowledge concerning registration requirements.

30. Upon the advice of the Secretary of the State, the Registrars of Voters have formally removed the Respondent as a voter, and he is no longer a registered elector in Southbury, Connecticut, effective December 24, 2008.
31. The Respondent admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
32. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
33. The Respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
34. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT The Respondent shall:

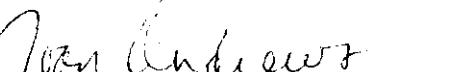
Remit a civil penalty to the State Elections Enforcement Commission in the amount of one thousand five hundred dollars (\$1,500) on or before March 3, 2009, and shall Henceforth strictly comply with Connecticut General Statutes §§ 9-23g, 9-140, 9-172, 9-359 and 9-360.

The Respondent:


Daniel Jarvis Brown
101 West 24th Street, Apt. 9E
New York, New York 10011

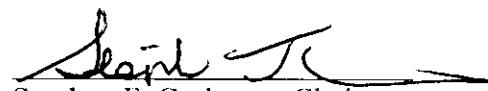
Dated: 2/23/09

For the State Elections Enforcement Commission:

BY: 
Joan M. Andrews, Esq.
Director of Legal Affairs & Enforcement
& Authorized Representative of the State
Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 3/3/09

Adopted this 5th day of March of 2009 at Hartford, Connecticut.


Stephen F. Cashman, Chairman
By Order of the Commission