

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Gary M. Amato, North Haven

File No. 2009-158

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that that Alexandra Penfold (hereinafter "the Respondent") voted in North Haven on November 3, 2009, although she was not a bona fide resident, in violation of General Statutes § 9-360.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. The Complainant, a resident of North Haven, Connecticut asserts that that the Respondent voted in North Haven on November 3, 2009 in violation of General Statutes § 9-360. Specifically, the Complainant alleges that the Respondent voted unlawfully because she was not a bona fide resident of that town at that time.
2. In support of his allegation, the Complainant provided the Commission with the following documents:
 - a. Alexandra Lambert and Nicholas Penfold's wedding announcement published in the New York Times on August 22, 2004 indicating, *inter alia*, that the Respondent is an employee of Simon & Schuster in New York, she is a graduate of New York University, and her husband was to become an Assistant District Attorney in Manhattan;
 - b. An online real estate record which appears to evidence the purchase of shares in a residential cooperative unit in Brooklyn, New York by the Respondent on June 19, 2008;
 - c. A purported LinkedIn profile of Nicholas Penfold which references his employment as Assistant District Attorney in New York County from August 2004 to the time the complaint was filed;
 - d. Respondent's Voter Registration Cards (dated May 13, 1999 and October 20, 2005 respectively) in which it appears that the Respondent affirmed that 25 Trumbull Place, North Haven, Connecticut is the address at which she lived at the time of registration;
 - e. The Town of North Haven official voter list of active voters which lists the Respondent as a resident of 25 Trumbull place;
 - f. CVRS records listing the Respondent as an active unaffiliated voter with a "residence address" at 25 Trumbull Place, North Haven and indicating that she voted in North Haven on May 19, 2009 (absentee ballot), November 4, 2008 (absentee ballot), November 6, 2007 (absentee ballot), June 19, 2007 (absentee ballot), November 7, 2006 (in person), and November 8, 2005 (absentee ballot);
 - g. A UCC financing statement for the Respondent identifying a Brooklyn, New York address as her mailing address;

- h. A NYC Department of Finance Office of the City Register report identifying Alexandra Penfold as a buyer of a real property interest in Brooklyn, New York.
3. The main issue in the present case is whether the Respondent was qualified to vote in North Haven on November 3, 2009. General Statutes § 9-12 (a) concerns elector qualifications and, as of October 1, 2007, § 9-12 provides that:

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 the citizen applies for admission as an elector** shall, on approval by the registrars of voters or the town clerk of the town of residence of such citizen, as prescribed by law, be an elector. . . . **For the purposes of this section . . . a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town.** . . . [Emphasis added.]

4. General Statutes § 9-7b (a)(2) concerns unlawful voting and provides that the State Elections Enforcement Commission has the following duties and powers:

To levy a civil penalty not to exceed . . . (A) two thousand dollars per offense against any person the commission finds to be in violation of . . . 9-170 . . . 9-172, . . . (C) two thousand dollars per offense against any person 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 . . . [Emphasis added.]

5. General Statutes § 9-170 also states that only individuals who are bona fide residents of the town in which they are offering to vote will be permitted to vote in *town* elections. It specifically provides in part that:

At any regular or special town election any person may vote who is registered as an elector on the revised registry list of the town last completed and he shall vote only in the district in which he is so registered, . . . **Each person so registered shall be permitted to vote unless he is not a bona fide resident of the town . . . holding the election . . .** [Emphasis added.]

6. Furthermore, § 9-360 provides in relevant part as follows:

Any person not legally qualified who fraudulently votes in any . . . primary, election or referendum in which the person is not qualified to vote . . . shall be fined not less than three hundred dollars or more than five hundred dollars and shall be imprisoned not less than one year or more than two years and shall be disfranchised. . . .

7. No one contests that the Respondent was a citizen of the United States and had attained the age of eighteen years by November 3, 2009. As such, the determinative issue is whether the Respondent was a "bona fide resident" of

North Haven at that time. If not, the Respondent will face liability for violating to General Statutes §§ 9-170 and 9-360. Furthermore, she may face civil penalty liability pursuant to General Statutes § 9-7b.

8. The Respondent admits that she voted in North Haven on November 3, 2009 but maintains that she did so lawfully because she was, remains, and always has been a bona fide resident of North Haven even though she also maintained a dwelling unit in Brooklyn, New York at that time. Specifically, she asserts that she maintains a bona fide residence at 25 Trumbull Place, North Haven which is owned by her mother, Pamela Parella and also occupied by her mother, father, and brother.
9. According to the Commission, an individual's bona fide residence is the place where that individual maintains a true, fixed, and principal home to which they, whenever transiently relocated, have a genuine intent to return. See, e.g., Complaint of Cicero Booker, Waterbury, File No. 2007-157 (2007). In other words, "bona fide residence" is generally synonymous with domicile. Id.; cf. Hackett v. The City of New Haven, 103 Conn. 157 (1925). The Commission has concluded, however, that "[t]he traditional rigid notion of 'domicile' has . . . given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, *and individuals with multiple dwellings*)."
[Emphasis added.] Complaint of James Cropsey, Litchfield, File No. 2008-047; see also Farley v. Louzitis, Superior Court, New London County, No. 41032, October 4, 1972 (considering issue of voter residency with respect to college students and stating that "a student, *and a nonstudent as well*, who satisfies the . . . residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting interests at the residence he selects exceed his voting interests elsewhere."); Sims v. Vernon, Superior Court, Fairfield County, Docket No. 168024 (Dec. 22, 1977, Levine, J.) (a case with similar facts to those presented here and concluding that an absentee ballot of an individual should be counted as that individual was a bona fide resident of the town in which the ballot was cast.); Wit v. Berman, 306 F.3d 1256, 1262 (2d Cir. 2002)(stating that under certain circumstances the domicile rule for voting residency can gives rise to administrative difficulties which has led to a pragmatic application of that rule in New York).
10. The Commission has previously concluded that "[a]n individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual's bona fide residence. Complaint of James Cropsey, Litchfield, File No. 2008-047. Rather, the individual only has to possess a present intention to remain at that residence. Id.
11. As such, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent. Id., see also Wit, 306 F.3d 1262 (quoting People v. O'Hara, 96 N.Y.2d 378, 385 (2001) for this principle.)

12. Thus, the issues in the present matter are whether 1) the Respondent truly resided at 25 Trumbull Place, North Haven when she voted in that town on November 3, 2009 and, if so, 2) whether she had legitimate, significant, and continuing attachments to that dwelling unit.
13. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.
14. We begin with the question of whether the Respondent truly resided at 25 Trumbull Place in November of 2009. We note that, at first glance it could appear that the Respondent does not actually reside at 25 Trumbull Place and her assertion that she does may be a sham. For example, there is evidence (and the Respondent admits) that the Respondent attended college in New York City from 2000 to 2004, purchased a residence in Brooklyn, New York in 2008, has worked at Simon & Schuster in New York City since 2004, maintains a dwelling unit in Brooklyn with her husband (who also works in New York City) at which she admits she spends significant time, keeps clothes and other personal belongings and receives mail.
15. The Respondent asserts, however, that she resided at both 25 Trumbull Place, North Haven and in Brooklyn, New York on November 3, 2009. The Commission finds that there is significant evidence in support of the Respondent's claim.
16. For example, at least five witnesses (including a police officer and neighbor) and the Respondent have stated that she has been present at 25 Trumbull Place several weekends a month since she left for college in 2000 through the present.
17. Furthermore, there is ample evidence that the Respondent maintains a bedroom there, keeps clothes, shoes, books, furniture, artwork, her college diploma, photographs, knick knacks, personal items like vitamins, toothbrushes and cosmetics, and valuable pieces of personal property there. There is also evidence that she receives mail there and has regularly has items shipped there rather than to her Brooklyn, New York dwelling.
18. There is also evidence that she utilizes the entire dwelling unit not just a bedroom. For example, there is evidence that she relaxes, cooks, eats, does laundry, and entertains friends there. There is also evidence that she utilizes the yard to relax and do yard work.
19. The Commission has not discovered or been offered any evidence that contradicts the Respondent's claim that she truly resides at 25 Trumbull Place as well as in Brooklyn, New York. The Commission therefore finds that Respondent truly resided at 25 Trumbull Place when she voted there in November of 2009.
20. In addition, the Commission finds that there is ample evidence that the Respondent had legitimate, significant, and continuing attachments to 25 Trumbull Place and the Town of North Haven when she voted there on November 3, 2009.

21. For example, there is significant evidence that establishes the importance of the house at 25 Trumbull Place to the Respondent, her love for that house, and its strong connection to her family's history (i.e., it was built by her grandfather, housed his medical practice and her father's law practice, and has been owned and occupied by her family for over 60 years).
22. Furthermore, abundant evidence establishes the Respondent's love for the Town of North Haven, her long history of community involvement there (i.e., long-term membership and attendance at a local church, local pool and library membership, pending membership in a local patriotic society, her frequent and regular attendance and participation in local fairs and events, and her book donations to local schools) her long-term family connections to North Haven (i.e., her family has resided in North Haven for over 60 years, her grandfather maintained a medical practice there, her father maintains a law office there, her father was a member of the Board of Education, and her mother was a Registrar of Voters and Justice of the Peace), her strong interest in community issues, her continued relationships with other North Haven residents and doctors, as well as her continuous and long-term voting record there (notably, the Respondent has never been registered to vote nor voted anywhere but North Haven).
23. The Commission has not discovered or been offered any evidence that contradicts the Respondent's claim that she has legitimate, significant and continuing attachments to 25 Trumbull Place and/or the Town of North Haven. The Commission therefore finds that the Respondent maintained legitimate, significant, and continuing attachments to 25 Trumbull Place and/or the Town of North Haven when she voted there in November of 2009.
24. Finally, the Commission finds that the weight of the evidence supports the Respondent's repeated assertions that she possessed a present intention to remain at 25 Trumbull Place in November of 2009.
25. In light of the aforementioned evidence, the Commission finds that the Respondent has always been and continues to be a bona fide resident of North Haven as she has maintained a regular physical presence at 25 Trumbull Place as well as legitimate, significant, and continuing connections to that house and the Town of North Haven and whenever transiently relocated intends to return, and does return.
26. The Commission therefore further concludes that the Respondent has not committed any violations of election law in connection with the allegations set forth in the Complaint.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the case be dismissed.

Adopted this 18th day of August, 2010 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission

