

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Tessa Marquis  
Milford

File No. 2010-001

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to General Statutes § 9-7b and asserts that that Gary Montano (hereinafter "the Respondent") voted in Milford on November 3, 2009, although he was not a bona fide resident, in violation of General Statutes §§ 9-7b(a)(2), 9-170, 9-171 and 9-360.

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

1. The Complainant, a resident of Milford, Connecticut asserts that that the Respondent voted in Milford on November 3, 2009 in violation of General Statutes § 9-360. Specifically, the Complainant alleges that the Respondent voted unlawfully because he was not a bona fide resident of that town at that time.
2. In support of her allegation, the Complainant alleged:
  - a. Montano resided at 133 Wildrose Road in Orange;
  - b. Montano continued to use 7 Stone Manor Drive in Milford as an address to vote;
  - c. Montano inquired with the Registrars of Voters in Milford whether he could use a business address to vote prior to the November 3, 2009 election;
  - d. Montano voted in person in the November 3, 2009 election using a Milford address of a house that once belonged to his daughter.
3. The main issue in the present case is whether the Respondent was qualified to vote in Milford 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 Milford at that time. If not, the Respondent will face liability for violating to General Statutes §§ 9-170 and 9-360. Furthermore, he may face civil penalty liability pursuant to General Statutes § 9-7b.
8. The Respondent admits that he voted in Milford on November 3, 2009 but maintains that he did so lawfully because he was, at the time of voting, a bona fide resident of Milford even though his wife and son maintained a dwelling unit in Orange, Connecticut at that time.
9. Specifically, he asserts that he maintained a bona fide residence in Milford.
10. 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), cert denied *Wit v. Berman*, 538 U.S. 923, 123 S.Ct. 1574, (stating that under certain circumstances the domicile rule for voting residency can give rise to administrative difficulties which has led to a pragmatic application of that rule in New York).

11. 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.
12. 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.)
13. Thus, the issues in the present matter are whether 1) the Respondent truly resided in Milford when he voted in that town on November 3, 2009 and, if so, 2) whether he had legitimate, significant, and continuing attachments to a dwelling unit there.
14. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.
15. By way of background, there are several addresses in Milford associated with Montano. There are residential properties located at 48 Point Lookout East in Milford in which Gary V. Montano is the trustee; there is also 23, 43 and 45 Bailey Lane in Milford and the owner of record is MAP Realty Associates LLC (Gary Montano is listed as the Principal & Agent); there are also commercial properties, Montano Cigarette, Candy and Tobacco, Inc. located at 290 Boston Post Road in Milford (Gary Montano is listed as the President); 298-3 Boston Post Road and 306-322 Boston Post and the owner of record is Montano Realty Associates LLC (Gary Montano is listed as the Managing Partner).
16. Furthermore, Alana Montano, one of Gary Montano’s daughters resided at and was the owner of record, at 7 Stone Manor Drive in Milford until approximately 1 month prior to the election question. Mikel Montano-Emerling, Gary Montano’s other daughter is the owner of record of 26 Tall Pine Road in Milford.

17. We begin with the question of whether the Respondent truly resided in Milford in November of 2009.
18. As an initial matter, we note that it appears that Montano truly maintained multiple residences to which he had legitimate, significant, and continuing attachments, and as such could choose any one of those residences to be his bona fide residence for the purposes of election law so long as he possessed the requisite intent.
19. In addition to the residential and commercial properties associated with Montano, listed above in Milford, Montano's wife and son reside at a residence in Orange, 133 Wildrose Drive and the Complainant specifically alleged that this Wildrose address is where Montano resided in November 2009 and that the Wildrose residence was Montano's bona fide residence.
20. Furthermore, the home at 7 Stone Manor was sold by Montano's daughter on or about October 1, 2009. Further complicating matters was the fact that Montano's name appeared on the Official Check Off List for the Town of Milford for the November 3, 2009 election at 7 Stone Manor Drive and that he was marked off as having voted using that address.
21. The Respondent asserts, however, and maintains that throughout 2009, he resided at 7 Stone Manor, Milford, 26 Tall Pines Rd. Milford, and 43 Bailey Lane, Milford, Connecticut. The Commission finds that there is significant evidence in support of the Respondent's claim.
22. From October 2008 to the beginning of October 2009, Montano maintained a residence at 7 Stone Manor Drive in Milford with his daughter Alana. At that residence he maintained a bedroom; kept some of his clothing and shoes there; kept some of his personal items there; additionally he relaxed, ate, did laundry and did limited cooking at the residence.
23. From October 2008 to January 2010, Montano also maintained a residence at 26 Tall Pine Road in Milford with his daughter Mikel and her family. At that residence he maintained a bedroom; kept some of his clothing and shoes there; kept some of his personal items there; additionally he relaxed, ate, did laundry and some limited entertaining of friends at the residence.
24. From October 2009 to January 2010, Montano also maintained a residence at 43 Bailey Lane in Milford. At that residence he maintained a bedroom; kept some of his clothing and shoes there; kept some of his personal items there; additionally he relaxed, ate, did laundry and some limited cooking at the residence.
25. For example, at least five witnesses and Montano have stated that he has been at various times, present at the addresses in Milford throughout 2009.
26. The Commission has not discovered or been offered any evidence that contradicts the Respondent's claim that he truly resided in Milford. The Commission

therefore finds that Montano truly resided in Milford when he voted there in November of 2009.

27. In addition, the Commission finds that there is ample evidence that Montano had legitimate, significant, and continuing attachments to Milford when he voted there on November 3, 2009.
28. For example, there is significant evidence that establishes the importance of Milford to Montano, in addition to the residential and commercial properties that Montano owns in Milford, his business and his business office are in Milford and he serves as chairman of the Harbor Management Commission.
29. The Commission has not discovered or been offered any evidence that contradicts Montano's claim that he had legitimate, significant and continuing attachments to the Town of Milford. The Commission therefore finds that the Respondent maintained legitimate, significant, and continuing attachments to the Town of Milford when he voted there in November of 2009.
30. It should also be noted that the Connecticut Voter Registration System (hereinafter CVRS) records for Montano reflect that he was registered in Milford for all of 2009 and that he was not registered anywhere else in Connecticut.
31. The Commission also notes that although Montano appeared on the Official Voter List at the Stone Manor address after that property had been sold, General Statutes § 9-35(e) provides that: "In each municipality, any elector, upon change of residence within the municipality, may cause the elector's registration to be transferred to the elector's new address by presenting to the registrars a signed request therefor, stating the elector's present address, the date the elector moved to such address and the address at which the elector was last registered. The registrars shall thereupon enter the elector's name on the list at the elector's new residence; provided no transfer of registration shall be made on the registry list on election day without the consent of both registrars."
32. In the instant case, Montano could have changed his address within Milford on Election Day to reflect that he maintained a bona fide residence at the Bailey Lane address or the Tall Pine address.
33. Furthermore, there is no evidence that Montano was registered in Orange or actually tried to vote in Orange in 2009. Montano has, since the filing of this complaint, resolved some personal issues and has decided that his bona fide residence going forward is going to be 133 Wildrose Drive in Orange and he has registered to vote there and provided supporting documentation for that registration.
34. Finally, the Commission finds that the weight of the evidence supports the Montano's repeated assertions that he possessed a present intention to remain in Milford in November of 2009.
35. In light of the aforementioned evidence, the Commission finds that the Respondent was at the time he voted in Milford, a bona fide resident of Milford

and he has maintained a regular physical presence in Milford, from October 2008 to the beginning of October 2009, Montano maintained a residence at 7 Stone Manor Drive in Milford with his daughter Alana; from October 2008 to January 2010, Montano also maintained a residence at 26 Tall Pine Road in Milford with his daughter Mikel and her family; and from October 2009 to January 2010, Montano also maintained a residence at 43 Bailey Lane in Milford, as well as legitimate, significant, and continuing connections to the Town of Milford and whenever transiently relocated intended to return, and did return.

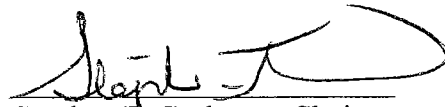
36. The Commission therefore further concludes that Montano has not committed any violations of election law in connection with the allegations set forth in the Complaint.

### ORDER

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

That the case be dismissed.

Adopted this 17<sup>th</sup> day of November, 2010 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson  
By Order of the Commission