STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by a SEEC Elections Officer

RESPONDENT:
Christopher Hetrick
11 Glenwood Drive
East Hampton, CT 06424

File No. 2010-044NF

FINAL DECISION

This matter was heard as a contested case on October 17, 2011, pursuant to Chapter 54 of the Connecticut General Statutes, § 9-7b of the Connecticut General Statutes and § 9-7b-35 of the Regulations of Connecticut State Agencies, at which time Attorney Patrick Lamb appeared on behalf of the State of Connecticut and the Respondent, Christopher Hetrick, did not appear. Documentary and testimonial evidence was presented.

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

1. These matters were referred to the Enforcement Unit of the State Elections Enforcement Commission (hereinafter the "Commission") by Elections Officer Nancy Staniewicz on or after April 4, 2011. ***State's Exhibit 6 and 8.***

2. Albert P. Lenge was designated as Hearing Officer on April 13, 2011 by order of the State Elections Enforcement Commission. The designation of Hearing Officer Lenge and accompanying Notice of Hearing and Order to Show Cause were sent to the Respondent on July 29, 2011. ***State's Exhibit 1.*** The matter was originally set down for a hearing on August 25, but a continuance was granted until October 17, 2011. On August 24, 2011, Stephen F. Cashman was designated as the Hearing Officer for all future hearings.

3. "Kinsella for Judge of Probate" has been registered as a candidate committee (hereinafter "the committee") with the State Elections Enforcement Commission from March 8, 2010 to the present. ***State's Exhibits 3 and 8.*** Mr. Hetrick has served as treasurer of the committee from that time to the present. ***State's Exhibits 3 and 8.***

4. General Statutes § 9-608 (e) provides, in relevant part, as follows: "(e) Distribution or expenditure from surplus funds. Reporting re deficits. (1) Notwithstanding any provisions of this chapter, **in the event of a surplus the campaign treasurer of a candidate committee** or of a political committee, other than a political committee formed for ongoing political activities or an exploratory committee, **shall distribute or expend such surplus** not later than ninety days after a primary which results in the defeat of the candidate, an election or referendum not held in November or **by January thirty-first following an election or referendum held in November**. . . ." (Emphasis added.)

5. General Statutes § 9-608 (e) (3) provides, in relevant part, as follows: "**Not later than seven days after such distribution** or not later than seven days after all funds have been expended in accordance with subparagraph (D) of subdivision (1) of this subsection, **the campaign treasurer shall file a supplemental statement, sworn under penalty of false statement, with the proper authority**, identifying all further contributions received since the previous statement and explaining how any surplus has been distributed or expended in accordance with this section. No surplus may be distributed or expended until after the election, primary or referendum." (Emphasis added.)

6. General Statutes § 9-623 (b) provides as follows: "(1) If any campaign treasurer fails to file any statement required by section 9-608, or if any candidate fails to file either (A) a statement for the formation of a candidate committee as required by section 9-604, or (B) a certification pursuant to section 9-603 that the candidate is exempt from forming a candidate committee as required by section 9-604, within the time required, the campaign treasurer or candidate, as the case may be, shall pay a late filing fee of one hundred dollars. (2) In the case of any such statement or certification that is required to be filed with the State Elections Enforcement Commission, the commission shall, not later than ten days after the filing deadline is, or should be, known to have passed, notify by certified mail, return receipt requested, the person required to file that, if such statement or certification is not filed not later than twenty-one days after such notice, the person is in violation of section 9-603, 9-604 or 9-608."

7. On or by January 31, 2011, the committee, through its treasurer, was required to distribute or expend any surplus remaining in the committee's bank account. On or by February 7, 2011, the committee was required to file a supplemental statement reporting on such distribution, or absent a surplus, file a report stating that it was in deficit. General Statutes § 9-608 (e) (4). The committee, for whom Mr. Hetrick was the treasurer, made no such filings. ***State's Exhibit 8 and Testimony of Ms. Staniewicz.***

8. On February 17, 2011, Ms. Staniewicz sent a letter to Mr. Hetrick, by certified mail, return receipt requested, stating that the Commission had not received an itemized financial disclosure statement from Mr. Hetrick that was due on February 7, 2011. ***State's Exhibit 5.*** The letter imposed a $100 late fine and requested that he file the statement within 21 days. ***State's Exhibit 5.*** The letter also informed Mr. Hetrick that if he did not submit the statement within 21 days, then pursuant to General Statutes § 9-623, Ms. Staniewicz would refer the matter to

the Commission's Enforcement Unit where the penalty would automatically become at least $200. ***State's Exhibit 5.***

9. After 21 days had expired, and no disclosure statement was filed, Ms. Staniewicz referred the matter to the Commission's Enforcement Unit. ***State's Exhibit 6.*** Failure to file within the prescribed time period after notice is given is a *per se* violation of General Statutes § 9-608. *See* General Statutes § 9-623 (b) (2).

10. It is concluded that the Respondent failed to timely file financial disclosure statement on or by February 7, 2011, reporting on the distribution of surplus or the committee's deficit, as the case may be, and by failing to file the statement within the 21 days after Ms. Staniewicz's notice.

11. Evidence was presented that Commission staff was persistent and rigorous in its efforts to contact the Respondent about the delinquent filing and attempted to contact her at multiple addresses and by email. ***State's Exhibits 5, 6, 7 and 10.***

12. As of the morning of the October 17, 2011 hearing, the Respondent had not submitted the required statement. ***State's Exhibit 8 and Testimony of Ms. Staniewicz.***

13. As a result of the above findings, the Commission finds the Respondent in violation of General Statutes § 9-608 (e) (3).

14. General Statutes § 9-7b (a) (2) provides, in pertinent part, that the Commission shall have the power to levy a civil penalty not to exceed "two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater, against any person the commission finds to be in violation of any provision of chapter 155 or 157." The Commission may levy a civil penalty against any person only after giving the person an opportunity to be heard at a hearing. *See* General Statutes § 9-7b (a) (2).

15. General Statutes § 9-623 (b) (4) provides, in pertinent part, that "[t]he penalty for any violation of section . . . 9-608 . . . shall be a fine of not less than two hundred dollars or more than two thousand dollars or imprisonment for not more than one year, or both."

16. In consideration of the factors listed in § 9-7b-48, Regs., Conn. State Agencies, in particular that (1) the State presented evidence that the Respondent had a history of prior campaign finance violations, (2) the Respondent, as of the date of the October 17, 2011 hearing, had not submitted the required statement and has therefore failed to provide the public with *any* disclosure of the committee's activities for the period covered by the missing statement, (3) Commission staff has both informed the Respondent of his duties as treasurer and made diligent and repeated efforts to contact him and assist her with the delinquent filings, and (4) the Respondent neither responded to the notice of hearing nor attended the October 17, 2011

hearing, it was recommended that the Commission assess a civil penalty against the Respondent in the amount of $500.00 for his violation of General Statutes § 9-608 (e) (3).

17. As a procedural matter, the Respondent's previous violations were adjudicated on July 13, 2011, and a written decision was issued on August 24, 2011. See File No. 2010-175NF and 2011-019NF. In that decision the Commission found that the Respondent had violated General Statutes § 9-608 by failing to file statements due on the seventh day preceding the November, 2010 election and on January 10, 2011. Reference was made to the fact that the committee had not terminated and filed a statement within seven days of said termination, i.e. February 7, 2011, however, this was not found to be a violation of General Statutes § 9-608 (e) (3). The resultant Order, while addressing the failure to file the termination or deficit statement, did not penalize that failure, but instead gave the Respondent additional time to file. The Respondent was not prejudiced by it in any way. In any case, the Order did not obviate the statutory requirement to file the termination or deficit statement, and this has not been done.

18. As the termination or deficit statement at issue in this hearing remains outstanding and the committee remains open past the statutory deadline, the following Order is adopted on the basis of these findings and conclusions:

The following Order is adopted on the basis of these findings and conclusions:

ORDER

IT IS HEREBY ORDERED THAT the Respondent, or his agent, shall distribute all surplus from the committee, if such surplus exists, as prescribed by General Statutes § 9-608 (e), and shall file the financial disclosure statement that was due to be filed by February 7, 2011, terminating the committee or reporting on its deficit, as the case may be, within 30 days of notice of this decision, pursuant to General Statutes § 9-7b (a) (3) (F); and

IT IS HEREBY ORDERED THAT the Respondent shall pay a civil penalty in the amount of $500.00, payable to the State Elections Enforcement Commission, within 30 days of notice of this decision, for the violation of General Statutes § 9-608 (e) (3), pursuant to General Statutes § 9-7b (a) (2).

Adopted this 18th day of January, 2012 at Hartford, Connecticut by vote of the Commission.

Stephen F. Cashman, Chairman
By order of the Commission

I certify the preceding final decision was sent to Respondent Christopher Hetrick, 11 Glenwood Drive, East Hampton, CT 06424, via first-class mail on January 18, 2012 with delivery confirmation tracking and certified mail, return receipt requested.

Sheri-Lyn Lagueux
Clerk of the Commission