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STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT
COMMISSION

In the Matter of a Complaint by Gerald T. Weiner, *et al.*,
Bridgeport

File No. 2010-099

AGREEMENT CONTAINING CONSENT ORDER AND
PAYMENT OF A CIVIL PENALTY FOR VIOLATIONS
OF CONNECTICUT GENERAL STATUTES § 9-612(g).

This agreement by and between Michael Marcinek of the Town of Shelton, County of Fairfield, hereinafter referred to as 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. On July 29, 2010 the Commission received a letter from Attorney Gerald T. Weiner, and his clients Mr. Joseph G. Costa and Respondent, self-reporting and detailing contributions by Respondent to *Jepsen 2010* and *Boughton for Connecticut*, and by Mr. Costa to *Jepsen 2010*. The contribution from Joseph G. Costa to *Jepsen 2010* is the subject of a separate document.
2. By way of background, Fletcher Thompson, Inc. (hereinafter "FTI") provides architectural and engineering services to businesses and the State of Connecticut. FTI appears on the Commission "*List Two – State Contractors Prohibited from Contributing to Statewide Office Candidates*" at the times relevant to this complaint. Pursuant to § 9-612g FTI is a state contractor. This is not in dispute, and the Complainants aver the same through there affidavit of complaint.
3. *Jepsen 2010* is a candidate committee established on May 20, 2010 by George C. Jepsen to seek the office of Attorney General, and its treasurer is Kathleen J. Kowalyshyn.
4. *Boughton for Connecticut* was an exploratory committee established by Mark D. Boughton to determine whether to seek the office of Governor, its treasurer was Roger A. Palanzo, and it was terminated on July 12, 2010.
5. Both Mark D. Boughton and George C. Jepsen were candidates for executive branch office at all times relevant to this complaint.

6. State contractors with the executive branch cannot contribute to, or solicit for any exploratory committee or candidate committee for Governor, Lieutenant Governor, Attorney General, Comptroller, Treasurer or Secretary of the State.
7. On March 31, 2010 Respondent made a \$100.00 contribution to the campaign of Mark D. Boughton, who was exploring a run for Governor, as reported by *Boughton for Connecticut* on its April 12, 2010 *Itemized Campaign Finance Disclosure Statement* (Form 30) for the period covering January 24, 2010 through March 31, 2010. His contribution was refunded to him by Jepsen 2010 on June 30, 2010 and reported on their "Termination Report for Candidate and Exploratory Committees – Non Standard" filed on July 12, 2010 on a Form 30 and covering the period April 1, 2010 through July 12, 2010.
8. Respondent is the Managing Partner, CEO, and a Shareholder, of FTI and was the treasurer of FTI at the times of the contributions described herein.
9. Respondent self-reported this complaint to the Commission, in part to invoke its authority to determine whether mitigating circumstances exist concerning such violation, such that the mandatory contract consequences in § 9-612(g)(2)(C) would not operate to prohibit FTI from proceeding with existing contracts and a Request for Proposal with the Department of Public Works (hereinafter "DPW"), a public agency.
10. In the course of its investigation the Commission found that Respondent also made a July 29, 2009 contribution in the amount of \$100 to *Amann 2010*, a candidate committee for Governor.
11. General Statutes § 9-612 provides, in pertinent part:
 - ... (g)(1)(F) "**Principal of a state contractor** or prospective state contractor" **means** (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) **an individual who is employed by a state contractor or prospective state contractor, which is a business entity**, as president, **treasurer** or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is

eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

... (2)(A) No state contractor, prospective state contractor, **principal of a state contractor** or principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, **shall make a contribution to**, or solicit contributions on behalf of (i) **an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer**, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee; ...

(C) **If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission**, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited **unless the commission determines that mitigating circumstances exist concerning such violation. No violation of the prohibitions contained in subparagraph (A) or (B) of this subdivision shall be deemed to have occurred if, and only if, the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made, ...**

(3) (A) On and after December 31, 2006, neither the Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, **any candidate for any such office nor any agent of any such**

official or candidate shall knowingly, wilfully or intentionally solicit contributions on behalf of an exploratory committee or candidate committee established by a candidate for nomination or election to any public office, a political committee or a party committee, from a person who he or she knows is prohibited from making contributions, including a principal of a state contractor or prospective state contractor with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder of a valid prequalification certificate.
[Emphasis added.]

12. The Commission concludes that Respondent, as treasurer of FTI, was a principal of a state contractor within the meaning of General Statutes § 9-612(g)(1)(F)(ii) at all times relevant to this complaint.
13. The Commission concludes that because Respondent was a principal of a state contractor at the time of his June 2010 contribution to *Jepsen 2010*, he was prohibited from making such contribution by General Statutes § 9-612(g)(2)(A).
14. However, the Commission finds that the contribution was returned by the candidate committee to Respondent as a principal of a state contractor within 30 days of receipt by *Jepsen 2010*.
15. The Commission therefore concludes that based on the return of the June 2010 *Jepsen 2010* contribution by that candidate committee to the Respondent, pursuant to General Statutes § 9-612(g)(2)(C), no violation of the state contractor contribution ban is deemed to have occurred pertaining to this contribution.
16. The Commission finds that Respondent was a principal of a state contractor at the time of his March 31, 2010 contribution to *Boughton for Connecticut*, and therefore was prohibited from making such contributions by General Statutes § 9-612(g)(2)(A).
17. The Commission therefore concludes that by making the March 31, 2010 \$100.00 contribution to the gubernatorial campaign of Mark Boughton, who was exploring a run for Governor, the Respondent violated General Statutes § 9-612(g)(2)(A).
18. Additionally, the Commission finds that Respondent was a principal of a state contractor at the time of his July 29, 2009 contribution to *Amann 2010*, and therefore was prohibited from making such contribution by General Statutes § 9-612(g)(2)(A).

19. The Commission therefore concludes that by making the July 29, 2009 \$100.00 contribution to the gubernatorial campaign of Jim Amann identified in paragraph 6, above, the Respondent violated General Statutes § 9-612(g)(2)(A).
20. In light of these violations, the Commission concludes that by operation of General Statutes § 9-612 (g)(2)(C), absent mitigating circumstances, DPW cannot administer or implement its contract and RFP with FTI award FTI any contracts, or amend any existing contracts, for one year after the election for which the unlawful contribution was made. The contributions by Respondent to *Boughton for Connecticut* and *Amann 2010* were made in connection with the November 2010 election, and absent a finding of mitigating circumstances concerning such violations, FTI could not amend or receive the benefits of an existing state contract or be awarded a new state contract until November 2011.
21. The Commission's findings of violations by Respondent in paragraphs 17 and 19, above, of the state contractor contribution ban requires the Commission to now determine whether "mitigating circumstances" exist concerning such violations pursuant to General Statutes § 9-612(g)(2)(C).
22. General Statutes § 9-612(g)(2)(C) provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether "mitigating circumstances" exist concerning the violation. If mitigating circumstances concerning the violation are found by the Commission, the contractual penalty is not automatic, but the awarding agency retains discretion to amend a contract or award a new contract. The agency may still void a contract in its discretion if a violation of the state contractor contribution or solicitation ban occurs, even if mitigating circumstances are found.
23. In determining whether circumstances are "mitigating," the Commission deems it necessary to consider any circumstances pertaining to the contributions by Respondent, as well as contracts and agreements between his employer FTI and DPW, that would, although not excusing the conduct, tend to reduce the harm the state contractor contribution and solicitation ban is designed to prevent. The ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees and exploratory committees for statewide office could wield over those state actors awarding such contracts and prevent awarding of contracts in exchange for campaign contributions.
24. The Commission finds that the DPW has two matters that are, according to DPW legal counsel, "pending the outcome of this instant matter," between DPW and FTI. The first of which is a payment of \$48,000 to FTI based on a year 2000 contract between DPW and FTI, the second is a \$924,990 project that FTI was recommended to the DPW for "based on a quality-based selection process." The DPW further represents that due to FTIs' substantial knowledge of the projects and firms involved, and loss of beneficially negotiated terms, and additional costs

for delays and a new selection process will cause DPW "hardships" should it not be able to continue with FTI with the aforementioned projects.

25. The Commission finds no evidence that there was any contact between candidate Mark D. Boughton and Respondent, nor candidate Jim Amann, or representatives of the candidate committees, regarding existing contracts between FTI and DPW or an RFP between FTI and DPW. In addition, Mark D. Boughton, the mayor of Danbury, was not in a position to influence the decision making of DPW, and was not otherwise employed by or affiliated with DPW. Furthermore, Jim Amann did not act on behalf of either party regarding the agreements between FTI and DPW. In addition, Respondent asserts that his contribution did not and was not intended to influence state action on any agreements or prospective agreements between FTI and DPW.
26. Pertaining to Respondent, and his prohibited contributions to *Boughton for Connecticut* and *Amann 2010*, the Commission determines that the following mitigating circumstances exist:
 - a. With regards to a separate contribution to a statewide candidate, Respondent sought and effected a cure to making a possible prohibited contribution by his own efforts thus satisfying §9-612(g) (2)(a)(C);
 - b. Upon learning of the prohibition pertaining to the state contractor ban, Respondent sought return of the contribution made to *Boughton for Connecticut*, which was effectuated;
 - c. Respondent self-reported to the Commission, by filing this complaint;
 - d. The candidates to whom Respondent contributed, were not incumbent statewide officers, had no official responsibilities relating to and were not in a position to effect the RFP between FTI and DPW; and
 - e. DPW has informed the Commission that it will be subject to additional costs, delays, loss of expertise and special knowledge of projects amounting to "hardships" to DPW absent a finding of mitigating circumstances with regards to FTI.
27. The Commission concludes pursuant to General Statutes § 9-612(g)(2)(C) that mitigating circumstances existed pertaining to the violations found with respect to the June 2010 contribution by Respondent to the candidate committee *Boughton for Connecticut*, and Respondent's July 2009 contribution to the candidate committee *Amann 2010*, such that FTI is *not* statutorily barred from implementing and receiving a contract award from DPW based on its pending RFP with DPW, nor is FTI barred from receiving payments from the state for its existing contracts with DPW.

28. The Commission further concludes that the policy behind General Statutes § 9-612(g) and its ban to avoid “pay-to-play” was not circumvented under the facts and circumstances of this case, and therefore allowing the process to move forward, despite the prohibited contributions and violations by Respondent, does not compromise the state’s interests to insure integrity in its campaign financing system.
29. Accordingly, the Commission concludes that these mitigating circumstances concerning the violations by Respondent do *not* bar DPW pursuant to General Statutes §9-612 from negotiating future contracts with or satisfying its existing contract obligations with FTI.
30. 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
31. 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.
32. 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.
33. Upon 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 henceforth strictly comply with the requirements of Conn. Gen. Stats. § 9-612(g).

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty of five hundred dollars (\$500.00) to the Commission on or before September 6, 2010.

For the Statc of Connecticut

DATED: 10/1/10

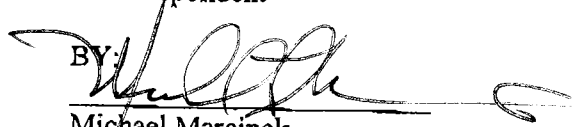
BY:


Shannon Clark Kief, Esq.
Legal Program Director and
Authorized Representative of
the Commission
20 Trinity Street, Suite 101
Hartford, Connecticut


DATED: 9/28/10

The Respondent

BY:


Michael Marcinck
6 Dahlia Lane
Shelton, Connecticut

Adopted this 1st day of Oct, 2010 at Hartford, Connecticut by a vote of the Commission.


Stephen F. Cashman, Chairperson
By Order of the Commission