

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaints of Catherine Malek,
Brookfield

File Nos. 2011-132 & 2011-133

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Dr. Robin Appleby, Town of Brookfield, County of Fairfield, State of Connecticut (hereinafter "Respondent"), and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with the Regulations of Connecticut State Agencies § 9-7b-54 and General Statutes § 4-177 (c). In accordance herewith, the parties agree that:

1. Brookfield resident Stanley C. Parker filed a *Political Committee (PAC) Registration* (SEEC Form 3) with the Brookfield Town Clerk on May 10, 2011, and designating Respondent as Concerned Citizens of Brookfield 2011 (hereinafter "CCB 2011") treasurer. CCB 2011 was a durational committee of two or more individuals, and was organized to oppose the May 14, 2011 Brookfield budget referendum.
2. Respondent was treasurer of CCB 2011, at all times relevant to this complaint. Respondent therefore was required to file complete and accurate reports with the Brookfield Town Clerk and make and report all expenditures by the committee pursuant General Statutes §§ 9-606 and 9-608.
3. On May 11, 2011, the Respondent filed an *Itemized Campaign Finance Disclosure Statement* (SEEC Form 20), pertaining to the May 14, 2011 referendum. Subsequently, the Respondent filed a SEEC Form 20 for the 7th day preceding the May 28, 2011 referendum on May 21, 2011. Respondent failed to file the termination report within 45 days of this referendum originally due on July 12, 2011. Finally, Respondent filed a SEEC Form 20 on October 6, 2011, designated by Respondent as a termination report for CCB 2011.
4. Complainant alleged that:
 - (1) Pertaining to File No. 2011-132,
 - A. Respondent failed to itemize the CCB 2011's May 21, 2011 SEEC Form 20, in that pages were missing detailing its receipts and expenditures;

B. The October 6, 2011 CCB 2011 termination report filed by Respondent disclosed a discrepancy in the amount of \$104.02 dollars that was not accounted. More specifically, the discrepancy was allegedly the difference between an \$2.98 account balance reported on October 6, 2011 of surplus to the Brookfield Republican Town Committee (BRTC) as compared to an October 11, 2011 amendment to the Termination Report that reported subsequent to the aforementioned distribution a balance on hand of \$106.96 in the CCB 2011 account; and,

(2) Pertaining to File No. 2011-133,

A. Respondent failed to disclose an expenditure by CCB 2011 in the amount of \$1,286.02 for a flyer advocating a “No” vote at the May 28, 2011 budget referendum.

5. General Statutes § 9-606, provides in pertinent part:

(a) The campaign treasurer of each committee shall be responsible for (1) depositing, receiving and reporting all contributions and other funds in the manner specified in section 9-608, (2) *making and reporting expenditures*, (3) reporting expenses incurred but not yet paid, (4) filing *the statements required under section 9-608*, and (5) keeping internal records of each entry made on such statements. ... [Emphasis added.]

6. General Statutes § 9-607, provides in pertinent part:

(a) No financial obligation shall be incurred by a committee unless authorized by the campaign treasurer, except that certain expenditures of a candidate's personal funds may be reimbursed as provided in subsection (k) of this section.

...

(e) (1) *Any such payment shall be by check drawn by the campaign treasurer, on the designated depository.* Any payment in satisfaction of any financial obligation incurred by a committee may also be made by debit card or credit card. ...

7. General Statutes § 9-608, provides in pertinent part:

(a) (1) Each campaign treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603, (A) on the tenth calendar day in the months of January, April, July and October, provided, if such tenth calendar day is a Saturday, Sunday or legal holiday, the statement shall be filed on the next business day, ... and (C) if the committee has made or received a contribution or expenditure in connection with any other election, a primary or a referendum, on the seventh day preceding the election, primary or referendum. ...

(2) Each campaign treasurer of a candidate committee, within thirty days following any primary, ***and each campaign treasurer of a political committee formed for a single primary, election or referendum, within forty-five days after any election or referendum not held in November***, shall file statements in the same manner as is required of them under subdivision (1) of this subsection.

...

(c) (1) ***Each statement filed under subsection (a), (e) or (f) of this section shall include***, but not be limited to: (A) *An itemized accounting of each contribution*, if any, including the full name and complete address of each contributor and the amount of the contribution; (B) in the case of anonymous contributions, the total amount received and the denomination of the bills; (C) ***an itemized accounting of each expenditure***, if any, including the full name and complete address of each payee, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be; (D) an itemized accounting of each expense incurred but not paid, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee; ...

[Emphasis added.]

8. Upon investigation, Respondent admits that there were pages missing from the original CCFB 2011 report filed with the Brookfield Town Clerk's office on May 21, 2011 at the time of his complaint, but asserts that all pages for the relevant SEEC Form 20 were included by him when originally filed.
9. The Commission finds, contrary to Respondent's assertion, as detailed in paragraph 8 above, available evidence upon investigation *also* supports the alternative conclusion that an incomplete report for the CCB 2011 was originally submitted by the town clerk's office on May 21, 2011.
10. The Commission finds, for the reasons detailed in paragraphs 8 and 9 above, that Respondent's alleged failure to file a complete itemized CCB 2011 SEEC Form 20 on May 21, 2011 could not be determined with certainty, as the evidence is conflicting and inconclusive. The Commission therefore dismisses this allegation.
11. Respondent denies that there was a discrepancy as alleged that resulted in a failure to account for \$104.02 in the CCB 2011 account balances between the October 6, 2011 report and the amended October 11, 2012 report by the CCB 2011.
12. Upon investigation, the Commission finds that Respondent filed the CCB 2011 termination report on October 6, 2011, and disclosed a remaining balance of \$2.98 on hand in the CCB 2011 account. Further, the Commission finds that Respondent disclosed that the \$2.98 in remaining funds of the CCB 2011 which was reported as a discharge of surplus to the BRTC on the October 6, 2012 termination report. Finally, the Commission finds, and records indicate that, on October 11, 2011 Respondent filed with the Brookfield Town Clerk an amended the CCB 2011 termination report disclosing a \$106.96 remaining balance, which was distributed as surplus by Respondent to a permissible 501 (c) (3) charity.
13. The Commission finds that while Respondent was not able to provide evidence of the discharge of the \$2.98 dollars to the BRTC, but *was* able to provide evidence that the \$106.96 disclosed on the amended October 11, 2011 termination report as a remaining account balance was in fact *subsequently* distributed to a charity, pursuant to General Statutes § 9-608 (e).
14. Because the allegation of a "discrepancy" in the reporting of account balances of CCB 2011 as between the October 6, 2011 termination report and the filing of an amended termination report on October 11, 2011, was not supported by the evidence the Commission dismisses this allegation.

15. The Commission notes that because the amended SEEC Form 20, as discussed in paragraphs 12 and 13 above, was a termination report, the \$106.96 should have been distributed *prior* to termination, thereby allowing Respondent to file the aforementioned statement disclosing a zero account balance for CCB 2011. Because Respondent failed to make and report the expenditure to disburse the surplus on the October 11, 2011 amended termination report discussed herein, he was therefore precluded from fully itemizing the CCB 2011's last expenditure for distribution of its surplus as required by of General Statutes § 9-608.
16. The Commission concludes that Respondent violated § 9-608, in that he failed to disclose the expenditure of surplus in the amount of \$106.96 to a charity on SEEC Form 20 that served as the CCB 2011 termination report and was filed with the Brookfield Town Clerk on October 11, 2011.
17. Additionally, the Commission finds that the check used to make the distribution of CCB 2011 surplus to charity was Respondent's *personal* check. Further, the Commission finds that as treasurer of CCB 2011, Respondent was required to make expenditures drawn on the committee's designated account, pursuant to General Statutes § 9-607.
18. The Commission concludes that Respondent violated General Statutes § 9-607, as detailed in paragraph 17 above, by using a personal check to discharge surplus of the CCB 2011, thereby failing to draw drawing on the CCB 2011's designating checking account to expend remaining surplus in the amount \$106.96.
19. The Commission finds, upon investigation that Respondents disclosed expenditures by CCFB 2011 for a flyer advocating a "No" vote for the May 28, 2011 budget referendum in the Town of Brookfield. Specifically, Respondent reported a May 24, 2012 expenditure for "printing" in the amount of \$370.00 and a May 25, 2011 expenditure for "printing" in the amount of \$1,280.02. The aforementioned expenditures totaled \$1,656.02 and were disclosed by Respondent on the SEEC Form 20 that was amended and served as the CCFB 2011 termination report filed October 10, 2011.
20. Upon investigation, as detailed in paragraph 19 above, the allegation regarding a failure to disclose expenditures for a flyer advocating a "No" vote at the May 28, 2011, was not supported by the evidence, and therefore the Commission dismisses the allegation pertaining a failure to disclose the aforementioned expenditures for flyers by the CCB 2011 as alleged by Complainant.
21. 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 the Regulations of Connecticut State Agencies § 9-7b-56.

22. 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.

23. 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.

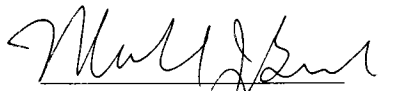
20. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondent with respect to this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with the requirements of General Statutes §§ 9-606, 9-607 and 9-608.

Dated:

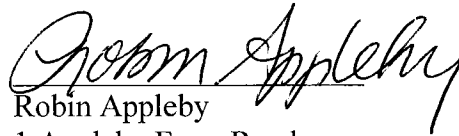
For the State of Connecticut
BY:



Michael J. Brandi, Esq.
Executive Director and General Counsel,
and Authorized Representative
of the State Elections
Enforcement Commission
20 Trinity Street
Hartford, Connecticut

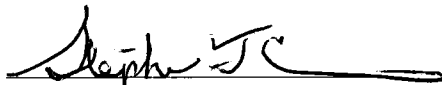
Dated:

The Respondent,
BY:



Robin Appleby
1 Appleby Farm Road
Brookfield, Connecticut

Adopted this 24th day of October, 2012 at Hartford, Connecticut, by vote of the Commission.



Stephen Cashman, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

OCT 31 2012

ENFORCEMENT COMMISSION