

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Mary-Ellen Vollemans, Bridgeport

File No. 2012-142

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Alma Maya, of the City of Bridgeport, County of Fairfield, State of Connecticut 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. At all times relevant to the instant Complaint the Respondent was the town clerk for the City of Bridgeport.
2. The Complainant alleges that the Respondent's office sent her absentee ballot for the August 14, 2012 Primary to an address other than that which was indicated on her application. Additionally, the Complainant alleges that the Respondent's office untimely sent her absentee ballot to the correct address, resulting in her disenfranchisement for the August 2012 primary.
3. The timeline of events in this matter is as follows:
 - a. On Tuesday, July 17, 2012, the Complainant mailed an absentee ballot application to the town clerk's office requesting that an absentee ballot be mailed to an address in Ohio at which she was staying through and beyond the day of the primary. Complainant stated on her application that that she would be out of the town for all ours of voting on August 14, 2012.
 - b. On Thursday, July 19, 2012, the town clerk's office received the Complainant's absentee ballot application.
 - c. On Tuesday, July 24, 2012, the town clerk's office mailed an absentee ballot to Complainant's registered address in Bridgeport rather than the address in Ohio requested on the application.
 - d. On Tuesday, July 31, 2012 the Complainant contacted the town clerk's office and informed the office that her absentee ballot was sent to the wrong address and requested that a second ballot be sent to the correct address. In response to the Complainant's request, the town clerk's office mailed a "Request for Additional

Absentee Ballot” form to the Complainant, along with a self-addressed and stamped envelope.

- e. On Saturday, August 4, 2012, the Complainant received the “Request for Additional Absentee Ballot” form.
 - f. On Thursday, August 9, 2012 the town clerk’s office received the Complainant’s completed “Request for Additional Absentee Ballot” application and mailed a second ballot to the Complainant at the Ohio address via first class mail.
 - g. On Monday, August 13, 2012, the Complainant received the second ballot, but too late to return it in time for it to be counted.
 - h. On Tuesday, August 14, 2012, no ballot was cast or counted for the Complainant.
4. The Complainant here alleges that her son lived in Connecticut at the registered address and discovered that the absentee ballot set had been sent to the wrong address. When she called the town clerk’s office, representatives of the Town Clerk’s office suggested that her son put the set in the mail and forward it to her. She states that she did not think that it was proper for him to handle her ballot and refused to direct him to do so. After sending the completed “Request for Additional Absentee Ballot” application form, the Complainant called the town clerk’s office and expressed her concern that she would not receive the ballot with sufficient time to return it. She alleges that the town clerk’s office told her that if she was concerned, she should have “FedEx[ed] the application.” She believes that since this was originally the mistake of the town clerk’s office, she should not have had to bear any additional postage costs and that the town clerk’s office should have FedExed the form.
5. The Respondent does not generally deny the facts, as alleged. She asserts that her staff misinterpreted the Complainant’s application, but did so inadvertently and in good faith. Further, the Respondent asserts that subsequent to the discovery of the mistake, her office acted reasonably and responsibly within the law in attempting to correct the mistake. Finally, the Respondent asserts that subsequent to this incident, she has made a point to re-emphasize “absentee ballot mailing address/process” in education and training of her office staff.
6. General Statutes § 9-140 reads, in pertinent part:
- (a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . .

(b) A municipal clerk may transmit an application to a person under this subsection by facsimile machine or other electronic means, if so requested by the applicant. If a municipal clerk has a facsimile machine or other electronic means, an applicant may return a completed application to the clerk by such a machine or device, provided the applicant shall also mail the original of the completed application to the clerk, either separately or with the absentee ballot that is issued to the applicant. If the clerk does not receive such original application by the close of the polls on the day of the election, primary or referendum, the absentee ballot shall not be counted.

...

*(g) On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. *When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, within twenty-four hours, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the clerk shall comply with the request. Any absentee voting set to be mailed to an applicant shall be mailed to the bona fide personal mailing address shown on the application.* Issuance of absentee voting sets shall also be subject to the provisions of subsection (c) of this section, section 9-150c and section 9-159q concerning persons designated to deliver or return ballots in cases involving unforeseen illness or disability and supervised voting at certain health care institutions. . . . (Emphasis added.)*

7. General Statutes § 9-153b reads, in pertinent part:

(a) If any absentee ballot applicant applies for an additional absentee ballot, he shall note on his application the reason for his applying for an additional absentee ballot and he shall return the absentee voting set formerly issued to him before another set is issued to him, provided, if he is unable to return the set formerly issued to him, his application for an additional ballot shall be accompanied by a statement signed under the penalties of false statement in absentee balloting in which he shall set forth the reason for his inability to return the set formerly issued to him. If he fails to file such a statement, no additional set shall be issued to him.

(b) Except as provided in subsection (d) of this section for members of the armed forces, the municipal clerk shall mark the serially-numbered outer envelope "rejected" and note the reasons therefor on all absentee ballots and envelopes so returned to him and shall seal such unopened ballots in a package and retain them in a safe place until delivered in accordance with section 9-140c. The municipal clerk shall keep a list of the names of each absentee ballot applicant who has applied for more than one absentee ballot, as provided in section 9-140, together with the serial number appearing on the outer envelope of each absentee voting set issued to each such applicant including the latest one issued.

(c) When an absentee ballot applicant has applied for more than one absentee ballot, only the latest absentee ballot issued to him by the municipal clerk as determined by the serial number appearing on the outer envelope may be counted and all absentee ballots and envelopes formerly issued to that applicant shall be marked rejected as provided in subsection (b) of this section and not counted.

(d) Subsections (a), (b) and (c) of this section shall not apply to members of the armed forces, and if more than one absentee ballot is received from any elector who is a member of the armed forces, the ballot of such elector bearing the latest postmark shall be counted if no absentee ballot of such elector has already been counted, provided that the municipal clerk shall mark all serially-numbered outer envelopes bearing earlier postmarks "rejected" and note the reasons for rejection and shall deliver such ballots in accordance with section 9-140c.

8. General Statutes § 9-153c reads, in pertinent part:

(a) If a municipal clerk has omitted the name of a candidate, party or office designation, inserted an incorrect or misspelled name of a candidate, party or office designation, provided an absentee ballot applicant with a ballot which is not the correct ballot for his voting district, or incorrectly imprinted or failed to imprint the designation of a state or local question on an absentee ballot in the appropriate space, and if any such omission or error is likely to mislead any voter, he shall, as soon as he becomes aware of such omission or error, promptly mail to each applicant to whom such an absentee ballot has been issued, a correct absentee ballot, envelopes for its return and instructions, a statement explaining the error or omission including the

correct name or question and a copy of this section. The municipal clerk shall inform the Secretary of the State when he proceeds under this subsection.

(b) Any additional absentee voting sets issued to applicants under this section shall be issued in consecutive ascending numerical order based upon the serial number appearing on the outer envelope for return of ballots to the municipal clerk, and the clerk shall keep a record of such numbers by making a notation on, or attaching a memorandum to, the applicant's original application for an absentee ballot.

(c) The municipal clerk shall keep a list containing the name, address and voting district of each absentee ballot applicant who has been issued more than one absentee ballot under this section and the serial number appearing on the outer envelope of each absentee voting set so issued. The list shall be kept with the list required under section 9-140.

(d) If more than one ballot is received from an applicant who has been sent a correct ballot under subsection (a) of this section, the ballot bearing the latest serial number shall be counted, if no ballot of such applicant has already been counted. The municipal clerk shall inscribe the word "rejected" and note the reasons for rejection on the outer envelope of each of such applicant's other ballots not so counted and shall seal them, unopened, in a package and retain them in a safe place until delivered in accordance with section 9-140c.

9. In consideration of the aforesaid, the Commission concludes that the Respondent violated General Statutes § 9-140 (g) by mailing the original application to the incorrect address.
10. The Respondent has no further violations in relation to how she handled getting the second ballot to the Complainant. General Statutes § 9-153c allows a town clerk to mail a second ballot, but is very specific as to the circumstances under which it may be done. Despite the fact that the town clerk's office's mistake set off the chain of events here, the facts in this matter did not qualify under the enumerated circumstance. As such, the procedures under General Statutes § 9-140b, which the Respondent followed, were correctly applied in this instance.
11. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the Commission finds to have failed to discharge a duty imposed by any

provision of chapter 146 or 147. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:

- (1) the gravity of the act or omission;
- (2) the amount necessary to insure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

12. Here, Respondent's office failed to send the absentee ballot to the correct address, which set off the unfortunate chain of events that led to the improbable result of disenfranchisement of a voter who had submitted her absentee ballot application nearly one month prior to the primary.
13. The evidence submitted by the Respondent does support her assertion that within her understanding of the law, her office was respectful towards the Complainant. They immediately admitted their mistake to the Complainant and apologized for causing her "inconvenience." Additionally, the Commission takes notice that the Respondent has no previous history of similar acts.
14. However, it was ultimately the Respondent's office's mistake that led to the issue in the first place. Moreover, after discovering the mistake the Respondent's office appeared to make no additional effort beyond the minimal effort that was required by law. For instance, this matter may never have come before the Commission had the town clerk's office, recognizing its mistake, taken it upon itself to bear the costs of "FedExing" the second application. That this option never occurred to the Respondent's office suggests a failure to appreciate the gravity of the situation. That the Respondent's office recommended to the Complainant that *she* should have sent the second application via FedEx suggests an especially egregious disregard for this Complainant's franchise.
15. Considering both the aggravating and mitigating facts in this matter, the Commission concludes that the specific facts of this case warrant a civil penalty of \$400 for this Respondent.
16. However, the Commission agrees to reduce the aforementioned civil penalty to \$200 provided the Respondent agrees to do the following:
 - a. Agree to henceforth strictly comply with General Statutes § 9-140; and
 - b. Send a letter of apology, signed by the Respondent, to the Complainant for disenfranchising her in the August 14, 2012 primary.

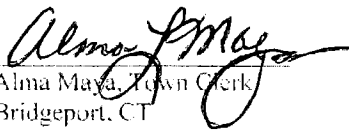
17. The Respondent agrees that if she fails to meet the above conditions within 30 days of signing this Agreement, she shall be responsible for the full \$400 civil penalty.
18. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect 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 Section 9-7b-56 of the Regulations of Connecticut State Agencies.
19. 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. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.
21. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

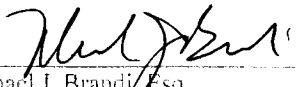
IT IS ORDERED THAT:

- a. Respondent will henceforth strictly comply with General Statutes § 9-140; and
- b. Respondent will pay a civil penalty of \$400.
 - i. If Respondent sends a letter of apology to the Complainant with 30 days of Respondent's signing of this Agreement, apologizing for disenfranchising the Complainant in the August 14, 2012 primary, Respondent's civil penalty will be reduced to \$200.

The Respondent:



Alma Maya, Town Clerk
Bridgeport, CT

For the State of Connecticut:

BY: 
Michael J. Brandi, Esq.
Executive Director & General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 3/18/13

Dated: 4/18/13

Adopted this 17th day of April of 2013 at Hartford, Connecticut

Anthony J. Castagno, Chair
By Order of the Commission