

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint of Karen Murphy, Stamford

File No. 2013-165

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Lucy Corelli and Ron Malloy, of the City of Stamford, 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 matter, Respondent Corelli and Malloy were, respectively, the Republican and Democratic registrars of voters for the City of Stamford.
2. The Complainant here alleges that during the 2013 municipal regular election in the City of Stamford, the returns filed with the Secretary of the State from Stamford erroneously reported 0 absentee ballot votes for Kathleen Murphy (the Complainant's sister), a petitioning candidate for mayor.
3. The investigation of this matter showed that when the final head moderator's return for the City of Stamford was submitted to the Secretary of the State, Ms. Murphy was declared to have received 842 total votes, but 0 votes were recorded as having come via absentee ballot, from the approximately 1622 that were filed for the mayoral race.
4. The Complainant alleges that she knows at least one individual who voted for Ms. Murphy by absentee ballot, Patricia Folson. The Complainant submitted a sworn affidavit from Ms. Folson averring that she voted for Ms. Murphy and that there should have been at least one vote recorded for her.

Law

5. General Statutes § 9-309, reads in pertinent part:

As soon as the polls are closed, the moderator, in the presence of the other election officials, shall immediately lock the voting tabulator against voting and immediately cause the vote totals for all candidates

and questions to be produced. The moderator shall, in the order of the offices as their titles are arranged on the ballot, read and announce in distinct tones the result as shown, giving the number indicated and indicating the candidate to whom such total belongs, and shall read the votes recorded for each office on the ballot. The moderator shall also, in the same manner, announce the vote on each constitutional amendment, proposition or other question voted on. The vote so announced by the moderator shall be taken down by each checker and recorded on the tally sheets. Each checker shall record the number of votes received for each candidate on the ballot and also the number received by each person for whom write-in ballots were cast. The result totals shall remain in full public view until the statement of canvass and all other reports have been fully completed and signed by the moderator, checkers and registrars, or assistant registrars, as the case may be. The result of the votes cast shall be publicly announced by the moderator, who shall read the name of each candidate, with the designating number and letter on the ballot and the absentee vote as furnished the moderator by the absentee ballot counters; also the vote cast for and against each question submitted. While such announcement is being made, ample opportunity shall be given to any person lawfully present to compare the results so announced with the result totals provided by the tabulator and any necessary corrections shall then and there be made by the moderator, checkers and registrars or assistant registrars, after which the compartments of the voting tabulator shall be closed and locked. In canvassing, recording and announcing the result, the election officials shall be guided by any instructions furnished by the Secretary of the State.

6. General Statutes § 9-150b, reads, in pertinent part:

(a) The [absentee ballot] moderator shall record the result of each count of absentee ballots, separately by time of count, on (1) the moderator's return, or in the case of central counting a separate moderator's return for each voting district, and (2) a separate record of the number of absentee votes cast for each candidate as shown on the moderator's return, or in the case of central counting, such a record for each voting district.

(b) If the absentee ballots were counted at the polls, when all counting is complete the moderator shall publicly declare the result of such count as provided in section 9-309 and add such count to the results from the

voting tabulators recorded on the moderator's return. Such return shall show separately the tabulator vote and the absentee vote and the totals thereof.

(c) If the absentee ballots were counted at a central location, when all counting is complete the moderator shall publicly declare the result of such count. He shall then deliver to the head moderator the central counting moderator's returns, together with all other information required by law or by the Secretary of the State's instructions. The head moderator shall add the results from the voting tabulators, recorded on the moderator's return for each polling place, to the absentee count recorded on the central counting moderator's return for the corresponding voting district, in the manner prescribed by the Secretary of the State. The returns so completed shall show separately the tabulator vote and the absentee vote and the totals thereof. . . .

7. General Statutes § 9-169, reads in pertinent part:

. . . The registrars of voters shall keep separate lists of the electors residing in each district and shall appoint for each district a moderator in accordance with the provisions of section 9-229 and such other election officials as are required by law, and shall designate one of the moderators so appointed or any other elector of such town to be the head moderator for the purpose of declaring the results of elections in the whole municipality. The registrars may also designate a deputy head moderator to assist the head moderator in the performance of his duties provided the deputy head moderator and the head moderator shall not be enrolled in the same major party, as defined in subdivision (5) of section 9-372. The selectmen, town clerk, registrars of voters and all other officers of the municipality shall perform the duties required of them by law with respect to elections in each voting district established in accordance with this section. . . .The provisions of this section shall prevail over any contrary provision of any charter or special act. [Emphasis added.]

8. General Statutes § 9-312, reads in pertinent part:

In each municipality divided into voting districts, unless otherwise provided by law, the head moderator shall be the presiding officer for the purpose of declaring the result of the vote of the whole municipality and of making returns to the Secretary of the State, and the moderators

in each of the voting districts shall be assistant presiding officers and shall make returns of their polls as required by law.

Response

9. The Respondent Registrars assert that immediately upon receipt of the instant Complaint at the end of November 2013, they did a review of the documentation from the election and discovered that they had failed to transcribe the results for Ms. Murphy from the absentee ballot tabulator machine tape.
10. The Respondent Registrars found that the machine tape reported 56 absentee ballot votes for Ms. Murphy, which did not end up in the head moderator's return to the Secretary of the State. They immediately amended the return and re-filed it on or about December 3, 2013.
11. The Respondents fully admit that an error occurred and assert that they will be changing their practices in order to assure that more review is given to the results before they are filed with the Secretary of the State. That assert that it was a very heavy turnout election for a municipal year due to a vacancy in the office of mayor and that they did not complete the count and leave their offices until 4:15am. They state that even before receiving the instant complaint, they were discussing implementing changes in their counting process to avoid such a late Election Night, which invites errors such as this.
12. The Respondents assert that subsequent to this election, they did a full review of their moderators, head moderators and other elections officials in order to develop a new process. They teamed up with their local Fairfield County ROVAC chapter to do an election post-mortem to explore new methods for tabulating the vote that both safeguards the accuracy of the result, while also streamlining the reporting process. They implemented these reforms in the State General Election in 2014.

Liability

13. As an initial matter, the Commission notes that the Respondent Registrars have volunteered to step into the shoes of the central counting moderator and the head moderator, who are the individuals primarily responsible for accurately recording and reporting election results.
14. With the above in mind, liability is fairly straightforward here. The tapes indicated that there were absentee ballot votes for Ms. Murphy and that these votes were not reported to the Secretary of the State. Not only was there a failure to accurately report the results under General Statutes § 9-150b, there was a failure to call for a discrepancy canvass as required by General Statutes § 9-311, as the tabulator tapes reported these votes as having been cast.

Considering the aforesaid, the Respondents are liable for violations of General Statutes §§ 9-150b and 9-311.

15. Connecticut General Statutes § 9-7b (a) (2) (Rev. to Jan. 1, 2014) provides that the Commission may, *inter alia*, levy a civil penalty not to exceed ((2) 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 any provision of chapter 145, part V of chapter 146, part I of chapter 147, chapter 148, section 7-9, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-23r, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-232i to 9-232o, inclusive, 9-404a to 9-404c, inclusive, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o or (B) 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.
16. The Respondents do not deny liability for failing to record the absentee ballot votes for Ms. Murphy. Objectively, this is a serious offense; 59 electors temporarily lost their votes in the mayoral race due to the omission. On the other hand, no votes or outcomes were ultimately affected by this error; the discrepancy was repaired and the votes counted after the registrars' review.
17. Respondent Corelli was a Respondent in a prior matter, *In the Matter of a Complaint by Cora M. Santaguida, et al., Stamford*, File No. 2013-020, which involved a failure of the head moderator to transcribe write-in ballot results from the moderators' returns in various districts. Ms. Corelli was not found directly responsible for the error, but did sign an agreement in which she agreed to henceforth comply with General Statutes § 9-265 and the reporting of write-in votes.
18. Mr. Malloy, who was elected to his post in 2012, has no prior history of election administration violations before the Commission.

19. The Respondents appear to be genuinely remorseful for the omission. It seems that there was no intention of committing fraud, but rather simply a failure to notice a discrepancy under difficult circumstances.
20. However, while the error here does not appear to have been made intentionally but rather was the result of the confusion and distraction created by a busy polling place at the close of the polls and a very late night, these registrars should reasonably have been expected to have been able to timely and correctly record and report all votes recorded and reported by the tabulators.

Agreement

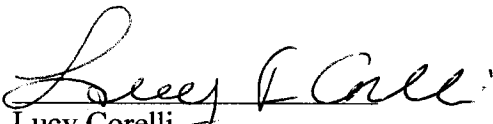
21. Considering the aforementioned, the Commission concludes and the parties agree that the appropriate remedy in the instant matter is a civil penalty of \$300 each and an agreement by the Respondents to henceforth comply.
22. The Respondents admit all jurisdictional facts and agrees that this Agreement 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 Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
23. The Respondents waive:
 - 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.
24. 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 Respondents in any subsequent hearing, if the same becomes necessary.
25. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

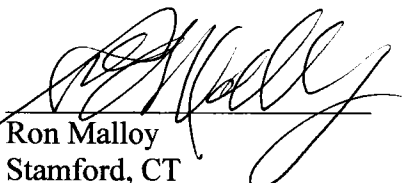
IT IS ORDERED THAT that Respondents Lucy Corelli and Ron Malloy shall pay a civil penalty of Three Hundred Dollars (\$300) each.

IT IS FURTHER ORDERED THAT that Respondents Lucy Corelli and Ron Malloy will henceforth strictly comply with the requirements of General Statutes §§ 9-309, 9-150b, 9-169, 9-311, and 9-312.

The Respondents:

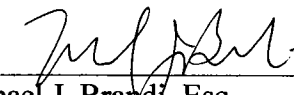

Lucy Corelli
Stamford, CT

Dated: 12/13/2014


Ron Malloy
Stamford, CT

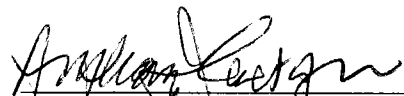
Dated: 12/12/2014

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 St., Suite 101
Hartford, CT

Dated: 12/16/14

Adopted this 13 day of JAN of 2015 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission