

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Betsey E. Smith, Portland

File No. 2013-175

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Pauline J. Neumann and Athena Neville, of the Town of Portland, County of Middlesex, 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. The events of this matter concern the November 5, 2013 municipal general election held in the Town of Portland.
2. Elections were held for First Selectman, Selectmen, Board of Education, Board of Assessment Appeals, and Zoning Board of Appeals.
3. The Zoning Board of Appeals had two different positions to fill, each of which was voted separately on the ballot. One position was for a single-seat five year term beginning in 2013 and the other for a single-seat five year term beginning in 2014.
4. The Complainant was a candidate for Board of Education.
5. The Complainant alleges that the ballots in the polling place contained a misspelling of her name and identified the incorrect term for one of two races for Zoning Board of Appeals.
6. Section 9-242a-4 of the Regulations of Connecticut State Agencies reads:

The registrars shall direct the preparation, adjustment and programming of the voting tabulator by a suitable technician who is adequately trained by a representative of the manufacturer and approved by the Secretary of the State in accordance with the ballot layout established by the municipal clerk. The municipal clerk and registrars shall direct a printer approved by a representative of the manufacturer or the Secretary of the State to print a number of official ballots determined by the registrar of voters and a number of absentee ballots determined by the municipal clerk in accordance with specifications approved by the Secretary of the

State. Official and absentee ballots may be printed on different colored paper to enable poll workers to readily identify the different types of ballots. The ovals on the official ballots may be printed in a color other than black to ensure greater accessibility for individuals with disabilities. Finally, ballots may be printed on both sides of the page as long as a separate page of instructions is provided with each absentee ballot and is available for use in each polling place.

7. General Statutes § 9-250, reads in pertinent part:

Ballots shall be printed in plain clear type and on material of such size as will fit the tabulator, and shall be furnished by the registrar of voters. The size and style of the type used to print the name of a political party on a ballot shall be identical with the size and style of the type used to print the names of all other political parties appearing on such ballot. *The name of each major party candidate for a municipal office, as defined in section 9-372, except for the municipal offices of state senator and state representative, shall appear on the ballot as it appears on the registry list of the candidate's town of voting residence, except as provided in section 9-42a. . . .* Such ballot shall contain the names of the offices and the names of the candidates arranged thereon. The names of the political parties and party designations shall be arranged on the ballots, either in columns or horizontal rows as set forth in section 9-249a, immediately adjacent to the column or row occupied by the candidate or candidates of such political party or organization. The ballot shall be printed in such manner as to indicate how many candidates the elector may vote for each office, provided in the case of a town adopting the provisions of section 9-204a, such ballot shall indicate the maximum number of candidates who may be elected to such office from any party. *If two or more candidates are to be elected to the same office for different terms, the term for which each is nominated shall be printed on the official ballot as a part of the title of the office.* If, at any election, one candidate is to be elected for a full term and another to fill a vacancy, the official ballot containing the names of the candidates in the foregoing order shall, as a part of the title of the office, designate the term which such candidates are severally nominated to fill. No column, under the name of any political party or independent organization, shall be printed on any official ballot, which contains more candidates for any office than the number for which an elector may vote for that office. (Emphasis added.).

8. The investigation revealed that the ballots for Portland's municipal general election held November 5, 2013 were ordered by Town Clerk Bernadette M. Dillon from Adkins Election Supplies. Ms. Dillon ordered 250 absentee ballots and 3000 ballots for the polling place.
9. Ms. Dillon denied that she did anything incorrectly and in support of her assertion, she remitted a copy of the order that she placed with Adkins Election Supplies, which contained all of the correct information.
10. In addition, the investigation revealed that the absentee ballots contained the correct information and only the poll ballots contained the error alleged by the Complainant.
11. More specifically, the ballots ordered for the polling place incorrectly spelled the Complainant's name as "Betsy Smith" rather than "Betsey Smith."
12. Additionally, the terms for the Zoning Board of Appeals races both read "Five Year Term Begins 2013," instead of identifying one as beginning in 2013 and the other in 2014.
13. The moderator's return from the Portland polling place indicated that the errors were discovered by elections workers at the polling place on the day of the election. The investigation revealed that upon the discovery, the Respondent Registrars contacted the Secretary of the State's office and spoke with counsel there, and received advice that the errors were not material and were instructed to take no further action beyond noting the issue in the moderator's diary.
14. The Respondent registrars do not deny that the error alleged occurred and they aver that they fully understand and accept responsibility.
15. The Respondents assert that they used the absentee ballots to do the machine testing and never checked the poll ballots before they were put into service.
16. The Respondents assert that they are very upset that they made this error and will put practices into place that will assure that all types of ballots are reviewed independently for accuracy as soon as they arrive from the printers.
17. Considering the aforesaid, the Commission concludes that the Respondent Registrars are liable for a violation of General Statutes § 9-250; they had a responsibility under the statute to make sure that the ballots were accurate and failed to do so in this instance.

18. 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 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.
19. 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.
20. Objectively, this is a serious offense. While, the misspelling of the Complainant's name is likely to have been immaterial to the outcome of that race, the incorrect term listed for the zoning race could have created a great deal of voter confusion and resulted in electors either under-voting the 2 zoning races or declining to vote in them altogether. The evidence was inconclusive as to whether this was in fact the case in this particular instance, but the Respondents' error created the environment where the risk was not insignificant.
21. However, the Commission notes that the Respondents appear to have genuinely believed that they had met their responsibilities under General Statutes § 9-250 and had not made an error due to the absentee ballot being correct. It did not occur to them that it was possible for the poll ballots to have been printed differently. The Commission agrees that the nature of the error by the printer was both rare and understandably misleading.
22. The Respondents have been very cooperative with Commission staff in this matter, the quickly took responsibility, and also have vowed to implement procedures to avoid this situation in the future.
23. The Respondents have no prior history before the Commission.
24. Considering the aforementioned aggravating and mitigating circumstances in this matter, the Commission concludes and the parties agree that the appropriate remedy herein is a civil penalty of \$100 and an agreement by the Respondents to henceforth comply.
25. 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.

26. 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.

27. 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.

28. 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 Pauline J. Neumann and Athena Neville shall pay a total civil penalty of One Hundred Dollars (\$100).

IT IS FURTHER ORDERED THAT that Respondents Pauline J. Neumann and Athena Neville will henceforth strictly comply with the requirements of General Statutes § 9-250.

The Respondents:

For the State of Connecticut:

Pauline J. Neumann
Pauline J. Neumann
Portland, CT

BY: Michael J. Brandi
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: 10-5-14

Dated: 10/10/14

Athena Neville
Athena Neville
Portland, CT

Dated: 10-5-14

Adopted this 14 day of Dec of 2014 at Hartford, Connecticut

Anthony J. Castagno
Anthony J. Castagno, Chair
By Order of the Commission

RECEIVED
STATE ELECTIONS

OCT 10 2014

ENFORCEMENT COMMISSION