

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of the Secretary of the State

File No. 2014-021

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Michael DiMassa, of the City of West Haven, County of New Haven, 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. On March 4, 2014, the Town of West Haven held a primary for seats on the Democratic Town Committee ("DTC"). Respondent Michael DiMassa was a candidate for the DTC in the 7th District.
2. The Secretary of the State's office referred this matter after receiving returns certified by Respondent Michael DiMassa as head moderator for the March 4, 2014 Democratic Town Committee Primary. The Secretary asserts that in the same town committee primary in which he served as head moderator, the Respondent was also candidate in the race for DTC representative to the 7th District, which is a violation of the general prohibition in General Statutes § 9-258 on candidates serving as an election officials.
3. General Statutes § 9-258 reads:

(a) For municipalities with more than one voting district, the election officials of each polling place shall be electors of the state and shall consist of one moderator, at least one, but not more than two official checkers, two assistant registrars of voters of opposite political parties, each of whom shall be residents of the town, not more than two challengers if the registrars of voters have appointed challengers pursuant to section 9-232, and at least one and not more than two ballot clerks and at least one but not more than two voting tabulator tenders for each voting tabulator in use at the polling place. A known candidate for any office shall not serve as an election official on election day or serve at the polls in any capacity, except that a municipal clerk or a registrar of voters, who is a candidate for the same office, may perform his or her official duties. If, in the opinion of the registrar of voters, the

public convenience of the electors in any voting district so requires, provision shall be made for an additional line or lines of electors at the polling place and, if more than one line of electors is established, at least one but not more than two additional official checkers and at least one but not more than two ballot clerks for each line of electors shall be appointed and, if more than one tabulator is used in a polling place, at least one and not more than two additional voting tabulator tenders shall be appointed for each additional machine so used. Head moderators, central counting moderators and absentee ballot counters appointed pursuant to law shall also be deemed election officials. [Emphasis added.]

4. The Respondent does not deny that he served as head moderator for the March 4, 2014 DTC Primary or that he was a candidate in the 7th District race. He had recently served as head moderator for the February 25, 2014 Special Election and the November 5, 2013 General Election. The Respondent submitted a letter dated February 1, 2014 from him to registrars Patricia C. Horvath and Jo Ann Callegari thanking them for appointing him as head moderator for both the February 25, 2014 Special Election and the March 4, 2014 DTC Primary, but requesting that he be recused from any work associated with the returns for the 7th District in the DTC Primary. He also submitted a letter dated February 6, 2014 and signed by both West Haven registrars accepting his recusal and informing him that Assistant Registrar Nancy Belous would input the numbers on the return and that 7th District Moderator Deborah Skerritt would “assume all responsibilities and take all necessary actions. In the event of a recanvass, she will perform all duties of Head Moderator.”
5. Turning to the question in this matter, the Commission concludes that it agrees with the Secretary’s assertion here. Despite the Respondent’s recusal, he was still an “election official,” which includes head moderators, for the March 4, 2014 DTC primary, the same primary in which he was on the ballot as a candidate. Section 9-258 is unambiguous and makes exception only where a registrar of voters or municipal clerk is on the ballot.
6. Considering the aforesaid, the Commission concludes that the Respondent violated General Statutes § 9-258 by serving as both candidate and election official.
7. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may, inter alia, 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. 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.

8. The only other matter in which a violation was found occurred in *In the Matter of a Complaint by Philip Withington, Scotland*, File No. 2001-238 in which the respondent was a candidate for library director during the November 6, 2001 municipal general election, but also served as the official checker at the one polling place in town. There, the Commission levied a civil penalty of \$250.
9. Here, the Respondent admits to performing the duties of head moderator. Mr. DiMassa's error was not as egregious as that found in *Withington*, insofar as his role as head moderator was behind-the-scenes in a relatively small primary, whereas the respondent in the prior case was present in the polling place (which was also a violation of General Statutes § 9-236) during the general election. Moreover, Mr. DiMassa foresaw the conflict and took steps that he believed were sufficient.
10. The Respondent has no prior history before the Commission.
11. The Respondent appears to have believed that his recusal was sufficient and no evidence points towards any involvement with the reporting of the results concerning his specific race.
12. Considering the aforementioned, the Commission declines to issue a civil penalty in this instance in exchange for an agreement by the Respondent to henceforth comply.
13. 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.

14. 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.

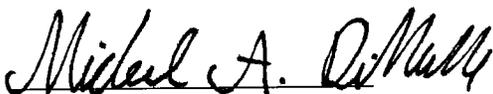
15. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

16. 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 that Respondent Michael DiMassa will henceforth strictly comply with the requirements of General Statutes § 9-258

The Respondent:


Michael A. DiMassa
West Haven, CT

For the State of Connecticut:

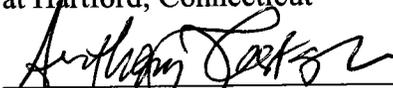
BY: 
Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 5/30/2014

Dated: 6/16/14

Adopted this 18th day of June of 2014 at Hartford, Connecticut

Anthony J. Castagno


Stephen F. Cashman, Chair
By Order of the Commission