

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Marie Freiss-McSparran, New London

File No. 2014-098

FINDINGS AND CONCLUSIONS

The Complainant, a spouse of a registered communicator lobbyist, brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging 2 violations by Respondent New London Democratic Town Committee of impermissibly taking a contribution from a lobbyist, by failing to compensate the Complainant for website development and a photograph benefitting the Respondent.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. At all times relevant to the instant matter, the Respondent was the New London Democratic Town Committee (“NLDTC”), through its treasurer, Mary Minton.
2. At all times relevant to the instant Complaint, the Complainant was the spouse of a registered communicator lobbyist, as that term is defined in General Statutes §§ 9-601 (16) (Rev. to June 18, 2013) and 1-91 (Rev. to July 1, 2012).
3. The Complainant makes two separate, but similar allegations here. First, she alleges that she had a verbal agreement with Chair William Satti in 2011 to be paid to build and/or maintain the NLDTC’s Internet presence including a web page and a page on the social media platform Facebook. She alleges that she successfully performed those services and that the NLDTC never paid her.
4. Second, the Complainant alleges copyrights over a photograph that she took and then posted to Facebook in 2010, which she alleges was utilized subsequently by the NLDTC without her permission and compensation, which she values at \$250.
5. Because the Complainant is the spouse of a communicator lobbyist, she asserts that both of the above allegations constitute an acceptance of impermissible contributions to the NLDTC.

Law

6. General Statutes § 9-610 (g) (Rev. to June 13, 2013) reads:

(g) No communicator lobbyist, member of the immediate family of a communicator lobbyist, or political committee established or controlled by a communicator lobbyist or a member of the immediate family of a communicator lobbyist shall make a contribution or contributions in excess of one hundred dollars to, or for the benefit of (1) an exploratory committee or a candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, (2) a political committee established or controlled by any such candidate, (3) a legislative caucus committee or a legislative leadership committee, or (4) a party committee. (Emphasis added.)

7. General Statutes § 9-622 (10) reads:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

...

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter;

8. General Statutes § 9-608 reads:

(a) Filing dates. (1) Each 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,

...

(c) Content of statements. (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) an itemized accounting of each expenditure, . . .

Count One: Failure to Compensate the Complainant Constituting an In-Kind Contribution to the NLDTTC

9. Complainant here alleges that she and NLDTTC Chair William Satti had a conversation in March 2011 about creating and/or maintaining the NLDTTC's Internet presence including a

web page and a page on the social media platform Facebook. She alleges that Mr. Satti agreed that because she was a spouse of a lobbyist, she would not be able to volunteer her time to the NLDTC. She alleges that Respondent Satti agreed that she should keep track of her time and that the NLDTC would pay her for her services as it had for another person who performed design services from the campaign, Shannon Brenek of Grey Dog Design.

10. The Complainant, who was also a candidate for City Council at the time, further alleges that she performed the services discussed in the alleged agreement and kept track of her time during the 2011 campaign season.
11. The Complainant submitted evidence of an e-mail conversation in January 2012 between her and both the NLDTC treasurer, Respondent Minton, as well as Mr. Satti. In the e-mail, the Complainant requested compensation of \$20/hour for 56.5 hours worked and asserts that she must be paid because she is the spouse of a registered communicator lobbyist. In the e-mail, Respondent Minton declined to pay the Complainant and asserts that she was not a party to any agreement and had no knowledge of such. Mr. Satti asserted in the e-mail that while he remembered being approached by the Complainant and her husband with a suggestion that she perform the services and that he agreed that she should go ahead, he did not recall any conversation about compensation for such services; he asserted in the e-mail that it was his understanding that her time would be spent on a volunteer basis.
12. In addition to the above, the Complainant included a document which she asserts is a documentation of her time spent and an invoice for the services rendered.
13. The Complainant also included a sworn statement from her spouse, Daniel McSparran, who asserts that he recalls the conversation between Respondent Satti and the Complainant including an agreement to compensate the Complainant for her services.
14. No other evidence of the alleged agreement between the Complainant and Respondent Satti was submitted by the Complainant. Upon request of Commission staff, the Complainant stated that the alleged agreement was never memorialized and that no written evidence, other than that was submitted, exists of the alleged oral agreement. Moreover, the Complainant stated that no individuals, other than the Complainant, Respondent Satti and the Complainant's spouse, were witness or party to the alleged oral agreement.
15. Communications between Commission staff and the Complainant revealed no prior history of the Complainant being compensated for design and/or web development services. The Complainant does not claim to be a professional designer and/or photographer and listed her profession as "community activist" upon request. She asserts that she has done design work in the past, albeit not professionally, but that she has been compensated for photographs that she has taken.

16. In interviews with Commission staff, Respondent Minton, for her part, reasserted her denial from the email exchange submitted by the Complainant. She asserts that as treasurer, she was the sole fiduciary for the campaign and did not give any permission for expenditures to be incurred by the NLDTC for the design services of the Complainant. However, she asserts that she was aware that the web presence was being built by the Complainant and authorized and reported an expenditure by the NLDTC to purchase hosting services. She asserts that she did not report any other expenditure related to the Complainant's services, as she did not understand them to be for compensation.
17. Mr. Satti also reiterated his denial from the e-mail of January 2012. He goes on to assert that the Complainant and her spouse were members of the NLDTC, that NLDTC members were expected to volunteer their time—not be compensated as committee employees and/or contractors. Moreover, he asserts that since 2013, when the NLDTC declined to endorse the Complainant for another term on the City Council, the Complainant and her spouse have had a political falling out with both Mr. Satti and others on the NLDTC.
18. Finally, Commission staff investigated the prior work of Ms. Brenek, of Grey Dog Design. She is a design professional who in the past has provided, *inter alia*, print design services for the NLDTC and others. The NLDTC files show a history of Ms. Brenek being compensated for her work. Moreover, Ms. Brenek was able to produce some written record of agreements for her services consistent with the compensation that she received.
19. Turning to the question raised by this Court, as an initial matter the Commission first addresses the Complainant's assertion that because she was a spouse of a communicator lobbyist that she could not volunteer her services. This is an incorrect statement. Communicator lobbyists and their immediate family members may not give *contributions* above \$100 to, in this case, a party committee. However, there is no prohibition on the provision of uncompensated services by a communicator lobbyist on a volunteer basis. Indeed, such volunteer services are specifically excluded from the definition of "contribution," in General Statutes § 9-601b (b) (4) (Rev. to June 18, 2013) which reads:

(b) As used in [chapter 155] and chapter 157, "contribution" does not mean:

...

(4) Uncompensated services provided by individuals volunteering their time on behalf of a party committee, political committee, slate committee or candidate committee, including any services provided for the benefit of nonparticipating and participating candidates under the Citizens' Election Program and any unreimbursed travel expenses made by an individual who volunteers the individual's personal services to any such committee.

For purposes of this subdivision, an individual is a volunteer if such individual is not receiving compensation for such services regardless of whether such individual received compensation in the past or may receive compensation in the future for such services;

20. As a secondary matter, even assuming the Complainant's assertion to be true, only a campaign treasurer may authorize payments by the committee and/or obligate the committee to may payments. General Statutes § 9-607 reads, 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.

(b) No candidate, campaign treasurer, or committee shall be liable for any debt incurred in aid of or in opposition to any political party, referendum question or the candidacy of any person or persons for said offices or positions unless such debt was incurred pursuant to an authorization issued under subsection (a) of this section.

...

21. The Complainant makes no claims nor presents evidence that she had an agreement with Respondent Minton for compensation for the services rendered.

22. Considering the aforesaid, the Commission concludes that the available evidence is insufficient to support a conclusion that it was more likely than not that the NLDTC made an obligation to pay the Complainant for her services. The investigation did not reveal any evidence that Respondent Minton obligated the NLDTC to pay the Complainant. Even the evidence of an agreement between the Complainant and Mr. Satti falls short of sufficient objective evidence of an agreement. The evidence does support a conclusion that it was more likely than not that it was the understanding of the treasurer, Respondent Minton, that the services were being performed by the Complainant on a volunteer basis, which is specifically authorized under General Statutes § 9-601b (b) (4).

23. Accordingly, Count One should be dismissed.

Count Two: Failure to Compensate the Complainant Constituting an In-Kind Contribution to the NLDTC

24. In Count Two, the Complainant alleges that in December 2010 she took a photograph including, but not limited to Governor Malloy, Lieutenant Governor Wyman, and Respondent Satti. She alleges that she uploaded a copy of the photograph to her personal Facebook page shortly after the photograph was taken, but never gave permission for anyone else to use it. She alleges that she recently discovered that a cropped version of the same photograph is being utilized on the NLDTC Facebook page.
25. The Complainant alleges that the photograph is her intellectual property and she should be compensated for its use. In her Complaint, she places a value of \$250 on the photograph but does not describe or provide supporting documentation as to copyright and/or ownership over the photograph and/or how she arrived at this valuation.
26. Respondent Satti asserts that the photograph in question was posted, along with a number of other photographs and shared on other individual's Facebook pages, including but not limited to Mr. Satti's. He further asserts that the photograph showed up on his "timeline" and was subsequently shared through Facebook's sharing feature with the NLDTC. He asserts that the NLDTC was only using freely available photographs available through the sharing process on Facebook, in the manner than they were intended to be used.
27. The Facebook "Statement of Rights and Responsibilities," which was last updated November 15, 2013, states, in pertinent part:¹

Statement of Rights and Responsibilities

This Statement of Rights and Responsibilities ("Statement," "Terms," or "SRR") derives from the Facebook Principles, and is our terms of service that governs our relationship with users and others who interact with Facebook. By using or accessing Facebook, you agree to this Statement, as updated from time to time in accordance with Section 14 below. Additionally, you will find resources at the end of this document that help you understand how Facebook works.

1. Privacy

Your privacy is very important to us. We designed our Data Use Policy to make important disclosures about how you can use Facebook to share with others and how

¹ <https://www.facebook.com/legal/terms>

we collect and can use your content and information. We encourage you to read the Data Use Policy, and to use it to help you make informed decisions.

2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition:

1. For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.
2. When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).
3. When you use an application, the application may ask for your permission to access your content and information as well as content and information that others have shared with you. We require applications to respect your privacy, and your agreement with that application will control how the application can use, store, and transfer that content and information. (To learn more about Platform, including how you can control what information other people may share with applications, read our Data Use Policy and Platform Page.)
4. When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture).
5. We always appreciate your feedback or other suggestions about Facebook, but you understand that we may use them without any obligation to compensate you for them (just as you have no obligation to offer them). . . .

28. The legal issues in Count Two are similar to those in Count One. If the NLDTC utilized a piece of property of value owned by the Complainant and failed to report that, it could constitute an impermissible in-kind contribution and a failure to report said contribution.

29. Here, the Commission has to determine three things:

- a. Who owns the photograph?
- b. What was the value of the photograph?
- c. Was the use of the photograph permissible?

30. If the use of the photograph was permissible, then the value of the photograph was either zero or de minimus. De minimus expenses are excluded from the definition of “contribution” in General Statutes § 9-601b (b) (18):

(b) As used in [chapter 155] and chapter 157, “contribution” does not mean:

...

(18) The value associated with the de minimis activity on behalf of a party committee, political committee, slate committee or candidate committee, including for activities including, but not limited to, (A) the creation of electronic or written communications created on a voluntary basis without compensation, including, but not limited to, the creation and ongoing content development and delivery of social media on the Internet or telephone, including, but not limited to, the sending or receiving of electronic mail or messages, . . .

31. Considering the evidence presented by the parties and discovered during the course of the investigation, the Commission finds that the ownership status of the photograph and its value is, at best, unclear. The Complainant is not a professional photographer and while she claims to have been compensated for photography in the past, she presented nothing to support this contention. She also did not present any evidence of the value of the photograph. The act of uploading the photograph to a social media platform complicated the determination of the ownership status and valuation of the photograph significantly. Through the Complainant’s own Facebook privacy settings, Facebook “friends” of the Complainant, including Mr. Satti were allowed to view the photograph and share it through Facebook’s built in mechanisms.

32. Accordingly, at this point, the Commission cannot conclude that the evidence supports a finding that the use of the photograph was impermissible, that the photography had any value (beyond a de minimis value), or that the Complainant retained ownership rights over it.


33. Considering the aforesaid, Count Two should also be dismissed.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter is dismissed.

Adopted this 18th day of November, 2014 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission