

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by Stacey Gravino,
Town Clerk, East Haven

File No. 2015-132A

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Richard DePalma (hereinafter "Respondent") of the Town of East Haven, County of New Haven, State of Connecticut and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with § 9-7b-54 of the Regulations of Connecticut State Agencies and § 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. East Haven Town Clerk Stacey Gravino referred this matter to the Commission and alleged that Respondent disseminated absentee ballot applications without a written explanation of the eligibility requirements included with the absentee ballot applications as required by General Statutes § 9-140 (*I*).
2. Specifically, Town Clerk Stacey Gravino referred this matter after a packet of twelve envelopes that were marked "undeliverable" was delivered to the Democratic Registrar on behalf of Respondent as Chairman of the East Haven Democratic Town Committee (EHDTC). Upon opening the envelopes, Ms. Gravino discovered a campaign mailer from Michael Speer and absentee ballot application in each. Further, she asserted that there were no separate written requirements or warning for the use of absentee ballots enclosed.
3. Additionally, Ms. Gravino asserted that there were campaign mailers from the *Speer for Mayor*, a candidate committee for the November 3, 2015 municipal election that were contained within the envelope for each absentee ballot application. Moreover, she alleged violations of General Statutes § 9-140 and § 9-135 by the town committee and the mayoral campaign, in that the absentee ballot applications were not signed by an "assister" and the campaign literature mislead people as to the eligibility requirements for voting by absentee ballot.
4. At all times relevant to this referral, Respondent was Chairman of the EHDTC. Further, Michael Speer was a mayoral candidate at the November 3, 2017 municipal election in East Haven and his registered candidate committee was *Speer for Mayor*.
5. This settlement is limited to Respondent. Any additional settlements with other individuals pertaining to the allegations by Ms. Gravino are treated under separate agreements or dispositions.

6. General Statutes § 9-135, provides:

(a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he or she is unable to appear at his or her polling place during the hours of voting for any of the following reasons: (1) His or her active service with the armed forces of the United States; (2) his or her absence from the town of his or her voting residence during all of the hours of voting; (3) his or her illness; (4) his or her physical disability; (5) the tenets of his or her religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his or her duties as a primary, election or referendum official, including as a town clerk or registrar of voters or as staff of the clerk or registrar, at a polling place other than his or her own during all of the hours of voting at such primary, election or referendum.

(b) *No person shall misrepresent the eligibility requirements for voting by absentee ballot* prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant. [Emphasis added.]

7. General Statutes § 9-140, provides 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. *Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting.* The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. ... If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.

...

(l) No candidate, party or political committee, or agent of such candidate or committee shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector or applicant to potential civil and criminal penalties. As used in this subsection, “agent” means any person authorized to act on behalf of another person. [Emphasis added.]

8. The Commission finds that, in response to this complaint and investigation, the EHDTC and Speer committee admitted distributing absentee ballot applications prior to the November 3, 2015 election. Further, the fact that a campaign mailer had a return address of the EHDTC was not disputed. Finally the Commission finds, and the EHDTC admitted, that there were no separate printed eligibility requirements for voting by absentee ballot or written warnings regarding voting by absentee ballot when ineligible to do so with the twelve absentee ballot applications for the November 3, 2015 East Haven municipal election.
9. Ms. Gravino alleged that the following language in the mayoral campaign piece included with the unsolicited absentee ballot applications violated General Statutes § 9-135 (b): *“The absentee ballot provided to you for your convenience is an important step in [the] direction of [economic development] because every vote truly does count.”*
10. To address this allegation, the Commission must determine whether the language “absentee ballot provided to you for convenience,” which was in the campaign mailer, was sufficient to misrepresent the eligibility requirements for use of absentee ballots pursuant to General Statutes § 9-135 (b).
11. The Commission finds that the Speer campaign mailer included with the absentee ballots also provided contact information regarding inquiries about additional absentee ballots for family members. Additionally, the Commission finds that the language regarding the “convenience” of the absentee ballot application was ambiguous as to whether it pertained to the absentee ballot application or the absentee ballot itself. Finally, the Commission finds that the language complained of does *not* pertain to the eligibility requirements for use of absentee ballot applications.

12. The Commission finds that the evidence was inconclusive, as to whether, the language in the campaign literature was *misleading* regarding the eligibility requirements for using absentee ballots. While the language may have been more clear if it stressed that the “absentee ballot application” was provided for convenience, rather than simply the “absentee ballot,” it nevertheless remained ambiguous and did not affirmatively misrepresent the eligibility requirements for using absentee ballots pursuant to General Statutes § 9-135.
13. The Commission concludes therefore that the campaign literature included with the absentee ballot applications, in these specific circumstances, did *not* violate General Statutes § 9-135 (b) and does not support the conclusion that the EHDTC misrepresented the eligibility requirements for voting by absentee ballot at the November 3, 2015 municipal election in East Haven. Therefore, the allegation is dismissed as it was not supported by the facts or the law after investigation.
14. The Commission finds that the twelve absentee ballot envelopes that formed the basis of this referral were marked “undeliverable.” The Commission further finds that because the twelve absentee ballot applications were returned undeliverable to the EHDTC uncompleted and unsigned by an applicant, as a factual matter, there would have been no assistance provided to the named individuals in each absentee ballot application that remained unused.
15. The Commission concludes therefore that the allegation pertaining to failing to sign as an assister in violation of General Statutes § 9-140 (a) is dismissed as it was not supported by the facts after investigation.
16. The Commission finds, as detailed herein, that Respondent, as Chairman of the EHDTC, admitted that the town committee disseminated unsolicited absentee ballot applications prior to the November 3, 2015 election. Further, the EHDTC admitted that there were no separate printed eligibility requirements for voting by absentee ballot or written warnings regarding voting by absentee ballot when ineligible to do so with the twelve absentee ballot applications for the November 3, 2015 East Haven municipal election that are the subject of this matter.
17. General Statutes § 9-140 (l) requires that a written explanation of the eligibility requirements for voting by absentee ballot and a written warning regarding voting by absentee ballot when ineligible to do so be included when unsolicited absentee ballot applications are disseminated. Furthermore, the Commission has consistently found violations of that section when such written explanations and warning are not included with unsolicited absentee ballot applications. See *Complaint by Jonathan Best*, Stratford, File No. 2009-081; *Complaint by David Helming*, Sharon, File No. 2009-154; and, *Complaint by Scott Veley*, Berlin, File No. 2011-011.

18. The Commission concludes that the EHDTC disseminated unsolicited absentee ballot applications pertaining to the November 3, 2015 municipal election in East Haven without the required written eligibility requirements and warnings pertaining the use of absentee ballots in violation of solicited General Statutes § 9-140 (l)
19. 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.
20. It is understood and agreed that this henceforth order will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
21. 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 agreement or Order entered into pursuant to this agreement.
22. Upon the Respondent's agreement with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.

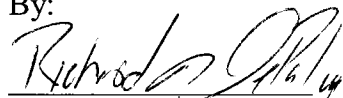
ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with § 9-140, General Statutes.

The Respondent:

For the State of Connecticut

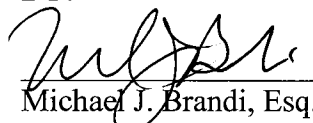
By:



Richard DePalma
10 Seaview Avenue
East Haven, Connecticut

Dated: 2-8-18

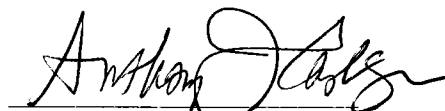
BY:



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

Dated: 2/13/18

Adopted this 18th day of April, 2018 at Hartford, Connecticut



Anthony J. Castagno, Chair
By Order of the Commission

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ENFORCEMENT COMMISSION