

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Steven Sheinberg, Fairfield

File No. 2016-077A

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Anthony Hwang (the "Respondent") and the undersigned authorized representative of the State Elections Enforcement Commission (the "Commission"), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

FACTUAL BACKGROUND

1. At all times relevant hereto, Anthony Hwang was an elector in the State of Connecticut and an incumbent State Senator.
2. On March 26, 2015, Respondent Hwang registered an exploratory committee for statewide office, Tony Hwang for CT. Richard Kopchayak was the treasurer of that committee when it was formed.¹ The original registration indicated that Mr. Hwang was exploring a candidacy for statewide office in 2016. This was an error as there was no statewide election in 2016. Accordingly, Respondent Hwang amended his registration on June 30, 2015 to accurately reflect that he was exploring for statewide office in 2018. On December 14, 2015, Respondent Hwang amended his registration to install Thomas McCarthy as the treasurer, replacing Mr. Kopchayak who passed away shortly thereafter after a long illness.²
3. On May 2, 2016, Respondent Hwang registered a candidate committee for state senate, Hwang4Senate. Mr. McCarthy was listed as the treasurer of that committee.
4. There are three expenditures at issue in this complaint: the purchase of a website domain; the purchase of embroidered hats and shirts; and the purchase of advertising on placemats at a chain of restaurants.
5. On April 10, 2016, Respondent Hwang purchased the Hwang4senate.com domain from GODADDY.COM. Respondent Hwang paid for this using his personal credit card and was reimbursed for the expenditure by Hwang4Senate. The total cost of the web domain was

¹ Allegations in the Complaint concerning Richard Kopchayak have been dismissed as Mr. Kopchayak died on January 14, 2016.

² Allegations concerning Thomas McCarthy shall be addressed in a separate document.

\$35.00. The GODADDY.COM account name listed was Tony Hwang for CT. The website published on this domain was the official campaign website for Hwange4Senate.

6. On February 8, 2016, Tony Hwang for CT paid Drew Design, LLC for the embroidery of hats and shirts that were the personal property of Respondent Hwang. The payment for this embroidery was by committee check dated February 8, 2016 in the amount of \$305.00. The shirts in question contained the Tony Hwang for CT logo and there was no reference to state senate or 2016 on any of the clothing or related documentation.
7. On or about April 5, 2015, Respondent Hwang placed an order for advertising on Chip's restaurant placemats. The order was for "one annual print minimum 250,000 per Chip's location." One of the five Chip's locations was within the Respondent Hwang's senatorial district. The advertisements contained the exploratory committee logo, the exploratory committee attribution, and material generally promotional of Respondent Hwang. There was no mention of 2016 or the state senate. The cost for this advertising was \$4,250.00. Respondent Hwang used his personal credit card to pay for the advertisements on September 18, 2015 to the printer, Top Line Consulting. Due to the illness and limited availability of his treasurer at this time, Respondent Hwang failed to submit the request for reimbursement at the time he made payment. Tony Hwang for CT reimbursed Respondent Hwang on December 28, 2016, after the instant complaint had been filed.

COUNTS I-III

Allegation

8. The Complainant alleged that each of the three expenditures detailed above were impermissible contributions from Tony Hwang for CT to Hwange4Senate.

Law

9. Under Connecticut law, exploratory committees are defined to be political committees. General Statutes § 9-601 (3).
10. General Statutes § 9-619 (b) provides:

No political committee established for a single primary or election, except a legislative caucus committee or legislative leadership committee, shall make a contribution or contributions to, for the benefit of, or pursuant to the authorization or request of, a candidate or a committee supporting or opposing any candidate's campaign for nomination at a primary, or any candidate's campaign for election, to the office of: (1) Governor, in excess of five thousand dollars; (2) Lieutenant Governor, Secretary of the State, Treasurer, Comptroller or Attorney General, in

excess of three thousand dollars; (3) chief executive officer of a town, city or borough, in excess of one thousand five hundred dollars; (4) state senator or probate judge, in excess of one thousand five hundred dollars; (5) state representative, in excess of seven hundred fifty dollars; or (6) any other office of a municipality not previously included in this subsection, in excess of three hundred seventy-five dollars. The limits imposed by this subsection shall apply separately to primaries and elections.

11. General Statutes § 9-607 (g) (1) further provides, in pertinent part:

As used in this subsection, (A) “the lawful purposes of the committee” means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate;[.]

12. General Statutes § 9-601a (a) (1) defines “contribution” to include:

Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made to promote the success or defeat of any candidate seeking the nomination for election, or election or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party

Analysis

13. Tony Hwang for CT was established as the funding source for Respondent Hwang to explore his candidacy for a statewide office in 2018. Accordingly, Tony Hwang for CT would not be permitted to make an expenditure to promote Respondent Hwang’s candidacy for state senate in 2016. Any such expenditure would be an impermissible contribution from Tony Hwang for CT to Hwang4Senate.

14. However, as detailed hereinafter, in the case of each expenditure at issue in this case, the expenditures were properly attributable to the committees for which they were reported.

Web Domain (Count I)

15. The evidence shows that the domain purchased on April 10, 2016 by Respondent Hwang was used exclusively to promote Respondent Hwang’s state senate run. This is consistent with the domain name itself, Hwang4Senate.com.

16. Respondent Hwang paid for this website using his personal credit card. Moreover, though the account name to which Hwang4Senate.com was registered was Tony Hwang for CT, this was merely the name that was associated with all transactions completed by Respondent Hwang, and not an accurate representation of the source of payment or the beneficiary. Respondent Hwang was reimbursed by the Hwang4Senate committee for this expenditure and there is no evidence to support the allegation that Tony Hwang for CT bore any of the costs for the web domain.

17. Accordingly, this allegation is dismissed.

Embroidery (Count II)

18. Evidence shows that, on February 8, 2016, Tony Hwang for CT paid Drew Design, LLC for the embroidery of hats and shirts that were the personal property of Respondent Hwang. This was prior to the formation of the Hwang4Senate candidate committee. Evidence further shows that Respondent Hwang did wear the clothing in question during his campaign for State Senate.

19. When this identical issue was brought before the Commission, concerning the same Respondent, the Commission held that "The reuse of these articles of clothing that are left over from a prior campaign, when within the personal possession of a candidate for his personal use, would not in this instance violate Connecticut's campaign finance statutes." *In the Matter of a Complaint by Heather Dean*, Fairfield, File No. 2014-100.

20. As the articles were purchased prior to the formation of the Hwang4Senate candidate committee, the facts in this case do not support the finding of a violation.

21. Accordingly, this allegation is dismissed.

Placemats (Count III)

22. The evidence shows that, on or about April 5, 2015, Respondent Hwang placed an order for advertising on Chip's restaurant placemats. Evidence further shows that the placemats ran between April of 2015 and April of 2016.

23. The evidence further shows that advertisement on the placemats was properly attributed to Tony Hwang for CT and contained no mention of Respondent Hwang's candidacy for State Senate.

24. In Declaratory Ruling 2011-03, the Commission stated:

Several indicia will factor into determining whether a share of the costs of a communication should be allocated to a particular candidate committee, including but not limited to the following: whether the candidate appears or is identified in the communication; when the communication was created, produced, or distributed; how widely the communication was distributed; and what role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication.

25. Implicit in these indicia is that there is a candidate committee, or at least a candidate, with which the costs can be shared. In this case, Respondent Hwang did not register his candidate committee until May 2, 2016. As detailed below, even if Respondent Hwang was required to form his campaign committee in April, when he made the expenditure for Hwang4Senate.com, this was the same time that the run of placemats was ending.
26. Accordingly, this allegation is dismissed.

COUNT IV

Allegation

27. In the course of the investigation, it was discovered that Respondent Hwang may not have timely formed a candidate committee for his 2016 state senate campaign within the time prescribed by statute.

Law

28. General Statutes § 9-604 (a) provides, in pertinent part:

Each candidate for a particular public office or the position of town committee member shall form a single candidate committee for which he shall designate a treasurer and a depository institution situated in this state as the depository for the committee's funds and shall file a committee statement containing such designations, not later than ten days after becoming a candidate, with the proper authority as required by section 9-603.

29. General Statutes § 9-601 (11) defines "Candidate" to be:

[A]n individual who seeks nomination for election or election to public office whether or not such individual is elected, and for the purposes of this chapter and chapter 157, an individual shall be deemed to seek nomination for election or election if such individual has (A) been endorsed by a party or become eligible for a position on the ballot at an election or primary, or (B) solicited or received contributions, other than for a party committee, made expenditures or given such individual's consent to any other person, other than a party committee, to solicit

or receive contributions or make expenditures with the intent to bring about such individual's nomination for election or election to any such office. "Candidate" also means a slate of candidates which is to appear on the ballot in a primary for the office of justice of the peace. For the purposes of sections 9-600 to 9-610, inclusive, and section 9-621, "candidate" also means an individual who is a candidate in a primary for town committee members.

30. General Statutes § 9-623 (b) (1) and (2) further provides:

If any treasurer fails to file any statement required by section 9-608, or if any candidate fails to file either (A) a statement for the formation of a candidate committee as required by section 9-604, or (B) a certification pursuant to section 9-603 that the candidate is exempt from forming a candidate committee as required by section 9-604, within the time required, the treasurer or candidate, as the case may be, shall pay a late filing fee of one hundred dollars.

In the case of any such statement or certification that is required to be filed with the State Elections Enforcement Commission, the commission shall, not later than ten days after the filing deadline is, or should be, known to have passed, notify by certified mail, return receipt requested, the person required to file that, if such statement or certification is not filed not later than twenty-one days after such notice, the person is in violation of section 9-603, 9-604 or 9-608.

Analysis

31. Respondent Hwang registered his candidate committee for his 2016 campaign for state senate on May 2, 2016. However, Respondent Hwang purchased Hwang4Senate.com on April 10, 2016.

32. While the purchase of Hwang4Senate.com was clearly an expenditure made "with the intent to bring about such individual's nomination for election or election to any such office", the Commission has held "that the purchase of a domain name containing an individual's name and a specific future election year does not, in and of itself, constitute an 'expenditure' that would transform the individual into a 'candidate' for campaign finance law purposes." Advisory Opinion 2010-03, 6. In reaching such a conclusion the Commission noted that:

One reason that someone might purchase a domain name long before any election is to prevent another person from registering the individual or potential candidate's name as a domain name, either to profit by selling it to the individual at a high price, or to use the domain name to create a web site containing negative material about the individual. An individual who thinks there might be even the slightest chance of seeking office at some point in the future might decide to reserve various domain names to ensure that the domain name is available to such individual, should he decide to seek office in the future.

Id.

33. There is no evidence that Respondent Hwang made any other expenditures in furtherance of his senate candidacy prior to May 2, 2016.

34. Accordingly, this allegation is dismissed.

COUNT V

Allegation

35. In the course of the investigation it was discovered that an expenditure paid for by Respondent Hwang may not have been reimbursed in a timely manner.

Law

36. General Statutes § 9-607 (g) (2) (O) allows treasurers to pay “reimbursements to candidates and campaign or committee workers made in accordance with the provisions of this section for campaign-related expenses for which a receipt is received by the treasurer[.]”

37. General Statutes § 9-611 (b) (1) further provides:

No individual shall make a contribution or contributions to, or for the benefit of, an exploratory committee, in excess of three hundred seventy-five dollars, if the candidate establishing the exploratory committee certifies on the statement of organization for the exploratory committee pursuant to subsection (c) of section 9-604 that the candidate will not be a candidate for the office of state representative. No individual shall make a contribution or contributions to, or for the benefit of, any exploratory committee, in excess of two hundred fifty dollars, if the candidate establishing the exploratory committee does not so certify.

38. In order to determine whether an expenditure made by a candidate or committee worker should be a contribution or an expenditure for which reimbursement is sought, the Commission has held that:

All reimbursements of committee workers must be reimbursed within a reasonable period of time. Any reimbursement of a committee worker within 45 days after an expenditure for which the worker seeks reimbursement, shall be deemed to be a reimbursement within a reasonable period of time. Any reimbursement that is made more than 45 days after the committee worker makes an expenditure for which he seeks reimbursement may be considered reasonable or not based upon the Commission’s specific assessment of the facts of that case. The Commission further notes that the more time that passes beyond the 45th day

after an expenditure is made, the less likely it is that the Commission will find that the reimbursement was made in a reasonable period of time.

In the Matter of a Complaint by Sheri-Lepper, West Haven, File No. 2014-157.

39. If an expenditure is not reimbursed within a reasonable period of time, despite the incapacitation of the treasurer and regardless of the intent, it is deemed to be a contribution. *Id.*

Analysis

40. Respondent Hwang paid for advertising on the Chips placemats on April 5, 2015. However, Tony Hwang for CT did not reimburse Respondent Hwang until December 28, 2016. The Commission finds that 633 days was not a reasonable period of time to reimburse the candidate for that expenditure.
41. Unlike candidate committees, candidates giving to their own exploratory committees are limited to the same contribution thresholds as any other contributor. In the case of a Tony Hwang for CT, the maximum contribution limit was \$375. Because Tony Hwang for CT did not reimburse Respondent Hwang for nearly two years, that the expenditure is deemed to be a contribution to Tony Hwang for CT. Therefore, the Commission finds that Respondent Hwang violated General Statutes § 9-611 by making a contribution to Tony Hwang for CT in excess of the contribution limits.³
42. While the Commission considers contribution limit violations to be serious matters, when such violations are not the result of an intentional violation, as is the case here, the Commission has considered that to be relevant in assessing a civil penalty. See *In the Matter of a Complaint by Sheri-Lepper, West Haven, File No. 2014-157*; *In the Matter of a Complaint by Paul M. Carver, New Britain, File No. 2006-137*; *In the Matter of a Complaint by Lesa C. Peters, Woodbury, 2012-003*; *Complaint of Monika Thiel, New Fairfield, File No. 2011-006*; *In the Matter of a Complaint by Larry McCloskey, Stafford, File No. 2009-109*.
43. The Commission also recognizes that the Respondent sought and obtained a reimbursement of the impermissible contribution upon the filing of this Complaint.

³ The Commission may not have pursued a finding of a violation against Respondent Hwang if he had requested reimbursement and had been refused or ignored. Those facts however are not the facts of this case. In this case, the evidence shows that the first time Respondent Hwang sought reimbursement was in December of 2016, and he was paid upon receipt of the request.

44. The Commission further notes that, in the course cooperating with this investigation, the Respondent voluntarily disclosed two additional expenditures in 2017 for placemat advertising that he had paid for directly but for which he had not been reimbursed. The Respondent has agreed to obtain such reimbursement. This Consent Order shall resolve any violations concerning that activity.
45. The Commission recognizes the hardship faced by the Respondent due to the illness and subsequent death of his treasurer. In addition, the Commission cites the compliance and cooperation of the Respondent through the course of the investigation. While the Commission finds no intentional violation, the delay between the payment and the request for reimbursement is too great to be viewed as reasonable despite the unfortunate circumstances.

TERMS OF GENERAL APPLICATION

46. The Respondent admits to all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.
47. 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 to contest the validity of the Order entered into pursuant to this Agreement.
48. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
49. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

ORDER

With regard to Counts I-IV it is hereby ordered that:

- 1) COUNTS I-IV are dismissed.

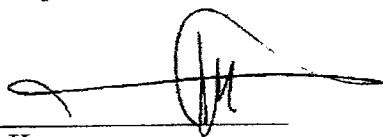
With regard to Count V, it is hereby ordered that:

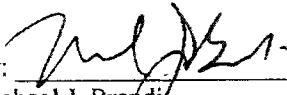
- 1) The Respondent shall henceforth comply with General Statutes § 9-611.
- 2) The Respondent shall pay a civil penalty of four hundred dollars (\$400).

It is further ordered that the Respondent shall immediately obtain reimbursement for all expenses he has incurred on behalf of the Committee.

For the Respondent

For the State of Connecticut:


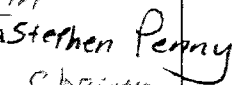
By: 
Anthony Hwang
80 Martingale Lane
Fairfield, CT 06824

By: 
Michael J. Brand
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106

Dated: 4/17/18

Dated: 8/15/18

Adopted this 15th day of August, 2018 at Hartford, Connecticut by vote of the Commission.


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