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STATE ELECTIONS
ENFORCEMENT COMMISSION

STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Urs Berger (Self-Reported), Hartford File No. 2021-144

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Urs Berger (hereinafter "Respondent") 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 Respondent self-reported a potential violation of General Statutes § 9-612.

2. Respondent is the spouse of Joanne Berger-Sweeney, president of the Trustees of Trinity College (commonly known, and referred to herein, as "Trinity College"), a position she has held since 2014.

3. Over time, including at the time of the contribution in question, Trinity College has been party to a number of contracts with the Connecticut Health and Educational Facilities Authority ("CHEFA"), a quasi-public agency of the State of Connecticut. Those contracts relate to CHEFA's issuance of tax-exempt bonds for the benefit of Trinity College. Accordingly, Mr. Berger appears to meet the definition of "principal of a state contractor or prospective state contractor." See Conn. Gen. Stat. § 9-612 (f)(1)(F).

4. Under Connecticut law, a principal of an executive branch state contractor is, and was at all times relevant hereto, prohibited from making contributions to a candidate committee for a candidate running for statewide executive branch office in the State of Connecticut.

5. Specifically, General Statutes§ 9-612 provides in pertinent part:

> (f)(2)(A) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or, on and after January 1, 2011, knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

(C) If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines that mitigating circumstances exist concerning such violation. No violation of the prohibitions contained in subparagraph (A) or (B) of this subdivision shall be deemed to have occurred if, and only if, the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made, ...

6. General Statutes § 9-6I2 (f) (I) (F) further defines "principal of a state contractor" as follows:

   "Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

7. Connecticut law further defines a "state contract" to be:

   an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies,

equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

General Statues§ 9-6I2 (f) (I) (C).

8. General Statutes § 9-612 (f) (I) (D) defines a "state contractor" to be:

   a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

9. In the self-report and after investigation, it was confirmed that Respondent, as the principal of a state contractor made the following prohibited contribution:

   Wooden for Treasurer on 2/3/2018 in the amount of $100.

10. In his communications with Commission staff, Respondent stated that he had a preexisting personal relationship with Mr. Wooden centered around their mutual close association with Trinity College. In particular, Mr. Wooden is an alumnus of the college and was, at the time of the contribution, serving on its board of trustees. (Mr. Wooden has since retired from the Board.) As noted, Mr. Berger's wife is president of Trinity College.

11. Based upon the foregoing, the Commission concludes that the self-reported contribution violated General Statues§ 9-612 (f) because Respondent was the principal of an executive branch state contractor.

12. Once the Commission determines that a principal of a state contractor has made or solicited an impermissible contribution, the contracting state agency may:

    void the existing contract with such contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines may void the state contractor's contracts and such contractor.

13. The Commission has held that, that pursuant to General Statutes§ 9-612 (f), a separate "mitigating circumstances" analysis is not reached unless the Commission determines that a violation has occurred. Therefore, the Commission finds that the violation by Respondent of the state contractor contribution ban, as detailed herein, allows the Commission to determine whether mitigating circumstances exist concerning such violation pursuant to General Statutes § 9-612 (f) (2) (C).

14. In determining whether circumstances are "mitigating," the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondent, as well as how any contracts, agreements or pending bids or responses to between the Companies and the State would, although not excusing the conduct, tend to reduce or militate against the harm of pay-to-play and/or influence peddling the state contractor contribution ban is designed to prevent.

15. Concerning what constitutes a "mitigating factor" the Commission has previously stated that:

    In determining whether mitigating circumstances exist regarding the violation, the Commission may take into consideration the following list of mitigating circumstances, which it should be noted, is not exhaustive:

    (a) The amount of the prohibited contribution or instance of solicitation;
    (b) The type of principal committing the violation;
    (c) Past history of noncompliance with election laws;
    (d) Whether the contractor or prospective state contractor exercised due diligence in notifying the principals of the statutory prohibitions;
    (e) The economic harm to the State;
    (f) The disruption of an essential State service; and
    (g) Any other circumstance that the contractor, prospective state contractor or contracting state agency may raise that, in the Commission's determination, is relevant to whether such contractual consequences should be imposed.

16. Specifically, the Commission has consistently and historically determined that, pursuant to General Statutes §9-612 (f), the state contractor ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees for statewide office and/or party committees could wield over those state actors awarding such contracts and to prevent the awarding of contracts in exchange for campaign contributions and various pay-to-play campaign finance schemes. *See In the Matter of a Complaint by Michael A. Neal*, Naples, FL, File No. 2018- 028; *In the Matter of a Complaint by Carla Squatrito, et al.* , File No. 2010-112; *In the Matter of a Complaint by Gerald T. Weiner, et al.*, File No. 2010-099; *In Re David Baxter, et al.*, File No. 2009-080; *In Re Charles Shivery*, File No. 2007-381; *In the Matter of a Complaint by Ronald Nault and Luchs Consulting Engineers, LLC*, File No. 2007-353; *In Re JCJ Architecture*, File 2008-120; *In Re Antinozzi Associates*, File No. 2014-009, *In the Matter of a Complaint by Curtis Robinson*, Plainville, File No. 20 14-169; and, *In the Matter of a Complaint by Raymond Baldwin*, Trumbull, File No. 2015-009.

17. With regard to Respondent's contribution detailed hereinabove, the Commission determines that the following mitigating circumstances exist:
    (a) Neither the Respondent nor the entity with which he is associated has any history of campaign finance or election law violations.

    (b) In the instance cited above, Mr. Berger made the contribution because of a preexisting personal relationship with the contribution recipient.

    (c) There is no indication that the contribution in question was given with the expectation of favorable treatment in connection with existing or prospective state contracts.

    (d) Mr. Berger has never had any involvement of any kind in Trinity College's operations, the college's contractual relationships with CHEFA, or the bond issues to which such contracts relate.

    (e) Although Treasurer Wooden is an ex-officio member of CHEFA's board of directors, there could be no reasonable basis to believe the contribution was intended to – or could – influence CHEFA's actions relating to Trinity College. Treasurer Wooden serves through a designee as one of ten members of CHEFA's board of directors. CHEFA's bond issues on behalf of Trinity College were recommended by CHEFA professional staff to the Board and, during the relevant time period and likely in all instances, have been approved by the Board unanimously or nearly unanimously without controversy.

(f) Upon learning of the potentially prohibited nature of the contribution, Mr. Berger inquired about the possibility of seeking its return. However, because Wooden for Treasurer is no longer an operating committee, return of the contribution is not possible.

(g) Mr. Berger self-reported this matter promptly upon learning of the potentially prohibited nature of the contributions in question.

18. The Commission determines, after investigation, that the policy behind General Statutes§ 9-612 (f) to address "pay-to-play" and/or influence peddling schemes relating to campaign contributions and the awarding of state contracts was not circumvented under these narrow facts and circumstances. Therefore, allowing Trinity College to continue its contractual relationships, obligations or bid proposals with the State of Connecticut, and allowing them to enter into new such relationships, does not compromise the State's interest to insure integrity in its campaign financing and state contracting systems.

19. Accordingly, the Commission concludes pursuant to General Statutes§ 9-612 (f) (2) (C) that mitigating circumstances exist pertaining to the violation found in connection with the Respondent's contribution such that Trinity College is not statutorily barred from continuing, effectuating or otherwise implementing existing contracts, contractual obligations or being awarded contracts with State of Connecticut.

20. 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

21. It is understood and agreed that this agreement 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 by either party as an admission in any subsequent hearing, if the same becomes necessary.

22. 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.

23. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any (i) further proceedings against Respondent, or (ii) proceeding against Trinity College or its affiliates pertaining to this matter, and this agreement and order does not serve as a prospective ban on future contracts between Trinity College and its subsidiaries and state agencies.

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STATE ELECTIONS
ENFORCEMENT COMMISSION

ORDER

IT IS HEREBY ORDERED THAT Respondent shall henceforth strictly comply with the requirements of General Statutes§ 9-612.

IT IS HEREBY FURTHER ORDERED THAT Respondent Urs Berger shall pay a civil penalty in the amount of two hundred and fifty ($250) to the Commission, in full and final resolution of this matter.

The Respondent:

By:

Urs Berger
Hartford, Connecticut

Dated: 9-13-2021

For the State of Connecticut:

By:

Michael J. Brandi, Esq.
Executive Director and General
Authorized Representative of the State
Elections Enforcement Commission
55 Farmington Ave., 8th Floor
Hartford, CT 06105

Dated: 9/15/2021

Adopted this 15th day of September, 2021 at Hartford, CT

By order of the Commission
Stephen T. Penny