

AUG 12 2011

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaints of Frank Burgio, Waterbury &
In re: "Friends of Selim"

File Nos. 2008-158 & 2008-223

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Patricia Goodin and Selim Noujaim, of the City of Waterbury, 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. The instant Agreement concerns two separate Complaints, captioned above, by Complainant Frank Burgio against "Friends of Noujaim" a participating candidate committee formed to promote the candidacy of Representative Selim Noujaim for re-election to the 74th house district. Based upon the information discovered during the post-campaign review of "Friends of Noujaim" and referred for the Commission's review, the Commission authorized an expansion of the investigation of the above-captioned matters into whether Respondent Noujaim and/or his candidate committee treasurer Respondent Patricia Goodin, may have further violated Citizens Election Program statutes, regulations or requirements.
2. In total, the above cases and Referral from the Campaign Disclosure & Audit Unit (the "Referral") allege 5 separate causes of action against the above Respondents. This Agreement addresses these causes of action in turn.

Count One: Excessive Expenditures for "Thank You" Advertising

3. Complainant in File No. 2008-223 alleged that Respondent Goodin authorized expenditures of \$1,080 on or about November 12, 2008, after Election Day, to produce and publish a "thank you" advertisement in the *Waterbury Republican American*, in violation of the \$500 spending limit for such post-election expenditures prescribed by § 9-706-2 (a) (13) of the Regulations of Connecticut State Agencies. The Campaign Disclosure & Audit Unit made a finding and recommended an investigation into the same subject matter, referring for further investigation an additional \$299 post-election payment discovered during the post-election campaign review.
4. Post-election "thank you" advertising is a permissible campaign expenditure. General Statutes § 9-607 (g) (2) reads, in pertinent part:

(2) Unless otherwise provided by this chapter, any campaign treasurer, in accomplishing the lawful purposes of his committee, may pay the expenses of: (A) Advertising in electronic and print media; (B) *any other form of printed advertising or communications including "thank you" advertising after the election; . . .* (Emphasis added.)

5. Prior to the 2008 election cycle, there were no limits on the amount of expenditures for post-election “thank you” advertising. However, as of the 2008 primary and election cycle, candidates participating in the Citizens Elections Program are required to adhere to expenditure limits for such advertising. Section 9-706-2 (a) (13) of the Regulations of Connecticut State Agencies, provides, in pertinent part:

(a) In addition to the requirements set out in Section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following Citizens’ Election Program requirements. Permissible campaign-related expenditures shall include but are not limited to expenditures for the following:

...
13. No more than the following amounts for post-primary or post-election thank you notes or other advertising to thank campaign staff, contributors, volunteers, or supporters: . . . \$500 for a candidate for the office of state representative
(Emphasis added.)

6. The investigation revealed that the candidate committee expended \$1,080 on or about November 12, 2008, after the election, to produce and publish a “thank you” advertisement in the *Waterbury Republican American*. The Campaign Disclosure & Audit Unit found that the candidate committee had reported an expenditure of \$299 for a radio advertisement also thanking voters. Thus, the total expenditures on post-election “thank you” advertising were \$1,379.
7. On or about December 3, 2008, 14 days prior to the filing of the Complaint, the candidate contacted the Commission to inform them that he had untimely discovered that there was a \$500 limit on post-election thank you notes and other advertising and to apologize for exceeding this limit. He asserted that the Respondents did not realize until it was too late that there were new limits on such advertising and asserted that they would strictly follow the new regulation in the future. However, it must be noted that he did not mention at this time the \$299 expenditure on radio advertising.

Considering the aforesaid, the Commission concludes that the campaign violated § 9-706-2 (a) (13) of the Regulations of Connecticut State Agencies by making \$1,379 in post-election “thank you” advertising, \$879 more than the \$500 limit prescribed in the statute, exceeding the limit by 176%.

Count Two: Impermissible Payments to Family Members

8. The Campaign Disclosure & Audit Unit made an additional finding and recommended an investigation into possible violations of § 9-706-2 (b) of the Regulations of Connecticut State Agencies in relation to a reported payment made to a sibling of the candidate and payments to 2 business entities owned by other siblings of the candidate.

9. Outside of the Citizens' Election Program ("CEP"), expenditures in the form of payments to non-immediate family members are not as broadly prohibited. General Statutes § 9-607 (g) reads, in pertinent part:
- (1) As used in this subsection, . . . (B) "immediate family" means a spouse or dependent child of a candidate who resides in the candidate's household.
 - (2) Unless otherwise provided by this chapter, any campaign treasurer, in accomplishing the lawful purposes of his committee, may pay the expenses of: . . . (L) compensation for campaign or committee staff, fringe benefits and payroll taxes, *provided the candidate and any member of his immediate family shall not receive compensation;*. . . (Emphasis added.)
10. As of the 2008 primary and election cycle, candidates participating in the Citizens Elections Program were subject to further limitations prohibiting all payments to "non-immediate" family members and to all businesses in which family had a 5% or more ownership interest. Section 9-706-2 (b) of the Regulations of Connecticut State Agencies, provides, in pertinent part:
- (b) . . . Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:
 - . . .
 - 3. Payments to the participating candidate or the participating candidate's family members, including: a participating candidate's spouse . . . *sibling*, . . . except payment(s) to the participating candidate or the participating candidate's committee worker or the participating candidate's family member serving as a committee worker if such individual is seeking reimbursement for a permissible expenditure for which he/she received authorization from the campaign treasurer to make such expenditure, and such participating candidate or committee worker provides the campaign treasurer with a written receipt or other documentary evidence from the vendor proving payment of the expenditure, as required by Section 9-607(j) of the Connecticut General Statutes;
 - 4. Payments to any entity in which the participating candidate or the participating candidate's family members, as listed in Section 9-706-2 (b) (3) of the Regulations of Connecticut State Agencies, has a 5% or greater ownership interest; . . . (Emphasis added.)
11. After investigation, the Commission finds that "Friends of Noujaim" reported a payment of \$300.00 to Nazin Noujaim, the candidate's brother. According to the candidate, this payment was for campaign activities, including his services as deputy treasurer, as well as Election Day responsibilities.

12. The candidate committee also reported four payments to Noujaim's Middle Eastern Bakery, Inc., totaling \$1,400, between July 13, 2008 and November 5, 2008. Noujaim's Middle Eastern Bakery, Inc. is a Connecticut corporation, owned and operated by the candidate's brother, Fouad Noujaim. According to Respondent Noujaim, Noujaim's Middle Eastern Bakery, Inc provides Lebanese baked goods and groceries, both retail and wholesale. Invoices were provided for all expenditures. According to Respondent Noujaim, the food was provided at market value, not at cost, and was used to feed campaign workers. The Commission finds that the evidence is insufficient to refute the above assertions.
13. The candidate committee further reported a payment of \$500 to Noujaim Realtors, LLC, a Connecticut corporation. Respondent Noujaim reported that Noujaim Realtors, LLC provided office space, telephones and a copier used by the candidate committee during the campaign to conduct campaign-related activity, including but not limited to preparing finance reports submitted to SEEC. The candidate committee submitted an agreement between the campaign and Noujaim Realtors, LLC with a rental period from 9/1/08-11/5/08. According to Respondent Noujaim, the space was provided at market value, not at cost. The Commission finds that the evidence is insufficient to refute this assertion.
14. The Respondents assert that they did not realize until it was too late that there were new limits on such expenditures and that they will strictly follow the new regulation in the future.
15. Considering the aforesaid, the Commission concludes that the campaign violated § 9-706-2 (b) (3) & (4) of the Regulations of Connecticut State Agencies by making payments to Nazim Noujaim, Noujaim's Middle Eastern Bakery, Inc., and Noujaim Realtors, LLC.

Count Three: Impermissible Expenditure for Payment to a Scholarship Fund

16. The Campaign Disclosure & Audit Unit made an additional finding and recommended an investigation into possible violations of General Statutes § 9-607 (g) and/or § 9-706-2 of the Regulations of Connecticut State Agencies concerning a possibly impermissible expenditure in the form of a \$400 payment to a nonprofit scholarship fund.
17. General Statutes § 9-607 (g) (1) reads, in pertinent part:
 - (1) As used in this subsection, (A) "the lawful purposes of his committee" means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee. . . .
 - (2) Unless otherwise provided by this chapter, any campaign treasurer, in accomplishing the lawful purposes of his committee, may pay the expenses of: . . . (U) purchasing tickets or advertising from charities, inaugural committees, or other civic organizations if for a political purpose, for any candidate, a

candidate's spouse, a member of a candidate's campaign staff, or members of committees;

18. Section 9-706-2 (b) of the Regulations of Connecticut State Agencies, provides, in pertinent part:

(b) . . . Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:

. . .

12. Donations to a charity or community organization, except as the admission fee of no greater than \$100 to an event attended by the candidate for campaign purposes *prior to the applicable primary or election*;

19. Here, the candidate committee reported a \$400 payment to the Julia Ashe Memorial Scholarship Fund on August 13, 2008. An invoice from the Julia Ashe Memorial Scholarship Fund states that the payment was for a Program Book Ad purchase for an event held on November 15, 2008, after the General Election. The memo line of the cancelled committee check notes that the purchase was for "20 tickets," presumably to fundraising event for the scholarship fund.

20. As an initial matter, the Commission finds that the factual question of whether the expenditure was for a program ad book purchase for the scholarship dinner event or for 20 tickets to such event is not necessary to determine here. Neither a program ad book purchase for a charity event occurring after Election Day nor tickets for such event are permissible post-election expenditures under General Statutes § 9-607 (g) or § 9-706-2 (b) of the Regulations of Connecticut State Agencies.

21. Considering the aforesaid the Commission concludes that the campaign violated General Statutes § 9-607 (g) (1) and § 9-706-2 (b) of the Regulations of Connecticut State Agencies by making an impermissible payment of \$400 to the Julia Ashe Memorial Scholarship Fund for an event that was held after Election Day.

22. However, the Commission takes note that this impermissible expenditure was discovered by Commission staff during the review of the candidate committee's application for a grant from the Citizens Election Fund and prior to the approval and disbursement of the primary grant. The Commission took this impermissible expenditure into account and as a direct result reduced the approved grant concomitantly by \$400. Accordingly, the Commission will take no further action on this Count.

Count Four: Impermissible In-Kind Contribution from a Political Committee

23. The Campaign Disclosure & Audit Unit made an additional finding and recommended an investigation into whether the candidate committee received unlawful in-kind contributions from the political committee "Noujaim PAC" in relation to a fundraiser held on or about November 19, 2007.

24. General Statutes § 9-704 provides, in pertinent part:

(a) The amount of qualifying contributions that the candidate committee of a candidate shall be required to receive in order to be eligible for grants from the Citizens' Election Fund shall be:

...

(4) In the case of a candidate for nomination or election to the office of state representative for a district, contributions from individuals in the aggregate amount of five thousand dollars, including contributions from at least one hundred fifty individuals residing in municipalities included, in whole or in part, in said district.

25. Section 9-706-2 of the Regulations of Connecticut State Agencies, provides, in relevant part:

(b) . . . Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:

...

8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee; . . .

26. The investigation revealed that a joint fundraiser was held on November 19, 2007 for "Friends of Selim" and Noujaim PAC, a political committee, at the Seven Angels Theater in Waterbury. The investigation found no records of a prior arrangement to share the costs of the fundraiser on a pro rata basis between the committees. However, certain expenses were found to have been paid for by each committee separately. The candidate committee and the PAC reported expenditures totaling \$2,666.57 and \$1,589.92, respectively. The candidate committee reported receipt of 166 contributions from individuals for a total of \$5,540. The PAC reported receipt of 53 contributions over \$50 from individuals for a total of \$7,050 and 2 PAC contributions for a total of \$150. The PAC reported an additional \$915 in contributions under \$50 for which no contributor name was required to be reported.

27. Joint fundraisers are not impermissible, per se, but participating committees must take care to share the costs of the joint fundraising on a pro rata basis. In Advisory Opinion 2010-08, the Commission summarized the advice of Commission staff in this area:

Even if an event is deemed to be a "joint event" for which some cost allocation is appropriate, candidates are not necessarily required to pay an equal share of the event costs. The law merely requires that a candidate committee pay for its pro rata share of a joint campaign event to avoid making a contribution to another . . . committee. This means that a candidate committee need only pay for the portion of the costs for the event that are proportionate to the benefit received by the candidate.

In the past, the Commission has taken the position that it will not dispute a committee's determination of its pro rata share of a joint expenditure unless it is found to be clearly erroneous. *In the Matter of a Complaint by Joseph P. Secola, Brookfield*, File No. 97-294. . . . The more indicia which are evident for a given candidate at an event reflect the extent a candidate has benefitted from that event.

. . . .
The Commission notes that that once committees of candidates participating in Program receive grant funds, they are not permitted to make expenditures to other committees. Regs. of Conn. State Agencies, § 9-706-2 (b) (8). . . . Thus, after the receipt of a grant, a participating candidate committee should pay for its proportionate share of event costs by paying this share directly to event vendors.

28. Here, the only evidence of relevant indicia available is the campaigns' reports of their receipts and expenditures. The total expenditures for the event were \$4,256.49, of which the candidate committee and the PAC paid 62% and 38%, respectively. The total *amount* of contributions received by the committees was \$13,655, from which the candidate committee and the PAC received 31% and 59%, respectively. However, the total *number* of contributions received by the committees was 221, from which the candidate committee and the PAC received 75% and 25%, respectively.
29. Considering the aforesaid, the Commission finds that the committees' determination of the pro rata share of the joint expenditures was not clearly erroneous, based on the indicia available. Each committee benefitted differently and while the proportion of the total amounts raised would appear to belie the notion that the costs were shared on a pro rata basis, the benefits received by each campaign support it. While the PAC received far more total dollars in contributions from the event, the candidate committee received a far greater *number* of total contributions. Indeed, this *single event* accounted for all but \$30 of the candidate committee's *total* contributions for the entire campaign. Finally, the PAC was not limited to receipt of no more than \$100 contributions from individuals like the candidate committee; contributions to the PAC averaged \$130 per contributor for this event and came from both individuals and other PACs. Had the candidate committee had a higher contribution threshold and could collect from PACs—for instance, if the candidate committee were non-participating—it is a reasonable possibility that the candidate committee would have raised total funds closer to the proportions contained in the allocation of pro rata costs.
30. For the reasons set forth above, the Commission concludes that there is insufficient evidence to conclude that the campaign received unlawful in-kind contributions from the political committee "Noujaim PAC" in relation to the fundraiser held on or about November 19, 2007. Count Four is dismissed.
31. Although not the subject of the current investigation, the Commission notes that candidate controlled political committees are prohibited by law from making expenditures under any circumstances that support the controlling candidate's own campaign. The commission therefore strongly recommends that candidates avoid real

improprieties or the appearance of impropriety by keeping the activities of such committees clearly separate from their own participating candidate committee.

Count Five: Impermissible In-Kind Contribution to a Business Owned By a Family Member

32. Complainant File No. 2008-158 alleges that the Respondents violated General Statutes § 9-607 (g) and §§ 9-706-2 (b) (3) & (4) of the Regulations of Connecticut State Agencies by making an impermissible expenditure to benefit a business entity by distributing calendars that featured, in part, the Noujaim Tool Company, a business owned by the family of the candidate and at which the candidate serves as Executive Vice President.
33. So long as the expenditures promote the lawful purpose of the committee, General Statutes § 9-607 (g) specifically allows committees to make expenditures for certain “political paraphernalia”—and enumerates calendars *specifically* as such permissible paraphernalia. It reads, in pertinent part:
 - (1) As used in this subsection, (A) "the lawful purposes of his committee" means: (i) *For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee. . . .*
 - (2) Unless otherwise provided by this chapter, any campaign treasurer, in accomplishing the lawful purposes of his committee, may pay the expenses of:
 -
 - (E) political paraphernalia, which is customarily given or sold to supporters including, but not limited to, campaign buttons, stickers, pins, pencils, pens, matchbooks, balloons, pads, *calendars*, magnets, key chains, hats, tee shirts, sweatshirts, frisbees, pot holders, jar openers and other similar items; . . . (L) compensation for campaign or committee staff, fringe benefits and payroll taxes, provided the candidate and any member of his immediate family shall not receive compensation; (Emphasis added.)
34. However, even if such political paraphernalia promotes the lawful purpose of the committee, it may not also result in a payment which would be otherwise impermissible. See General Statutes § 9-607 (g) (4) and Section 9-706-2 (b) (1) of the Regulations of Connecticut State Agencies (prohibiting personal use of campaign committee funds); Section 9-706-2 (b) (13) of the Regulations of Connecticut State Agencies (limiting expenditures on thank you advertising); and Section 9-706-2 (b) (3) & (4) of the Regulations of Connecticut State Agencies, (prohibiting payments to family members and family businesses).
35. The investigation revealed that 8,000 calendars were purchased for a total of \$13,541.50 by the candidate committee on or about September 11, 2008 and on or about October 22, 2008.

36. The calendars are 12-month wall calendars featuring photographs of various properties and locations around the 74th House district. The front cover of the calendar identifies the calendar as the "Waterbury 74th District 2009 Calendar." Other language on the cover reads "Compliments of State Representative Selim Noujaim" and "Thank you for Voting!" The cover features the correct attribution. General Statutes § 9-621 (a).
37. The locations featured throughout the calendar, including the cover, include, but are not limited to, schools, churches, and a community theater in the district. One photograph is featured for each month and the name of the property is identified in a caption below the photograph. The month of July features a picture of a portion of the front of the building that houses the Noujaim Tool Co., Inc., including the signage that identifies the name of the Company and its address. The caption identifies the location as "Noujaim Tool Company, Chase River Road."
38. Noujaim Tool Co, Inc., is a stock corporation whose principals were at all relevant times Joseph George Noujaim, president and Daad J. Noujaim, secretary. Joseph George Noujaim is the candidate's brother who, he asserts, "runs the company." The candidate asserts that he does not personally own any part of the company, but rather is a salaried employee. The Annual Statement of Financial Interest forms filed with the Office of State Ethics for the years 2008 and 2009 support this assertion. No other evidence has been found contesting this statement.
39. He stated that the calendars were largely his idea and that he did the majority of the work in getting them produced, including taking the photographs featured in the calendar. He asserts that he wanted to feature "landmarks" in the district that he was proud of and that Noujaim Tool Co. was important enough to the district to warrant being featured in the calendar.
40. According to the candidate, Noujaim Tool Co. is an industrial business whose customer class is extremely limited and specialized; he asserts that even if the calendars were to be considered advertising for Noujaim Tool Co., Inc., and not the candidate committee, it is unlikely that the business would have derived any benefit from them. No evidence was found that they were given to the business to distribute as promotional material or that there was any effort made to distribute them in such a way that they would likely reach the customer base of the business.
41. It is unclear whether the calendars were handed out to voters before they voted or afterwards; however, according to the candidate, these calendars were handed out on Election Day at various polling places around town.
42. Whether the calendars were permissible campaign paraphernalia or whether the inclusion of the family business and the thank you message prominently displayed on the calendars create a violation of the campaign finance law is a question of fact. The Commission finds that the totality of the circumstances do not demonstrate a clear violation of General Statutes § 9-607 (g) (4), § 9-706-2 (b) (1) of the Regulations of Connecticut State Agencies or § 9-706-2 (b) (13) of the Regulations of Connecticut State Agencies.

43. For the reasons set forth above, the Commission concludes that there is insufficient evidence to conclude that the campaign violated Statutes § 9-607 (g) and Section 9-706-2 (b) (1) & (13) of the Regulations of Connecticut State Agencies by making expenditures for the calendars. Count Five is dismissed.
44. In summary, the Commission's consideration of an appropriate civil penalty here concerns \$2,200 in impermissible payments to the candidate's family members and businesses owned by such family members, as well as \$879 in excessive payments for post-election "thank you" advertising. In past analogous matters, the Commission has applied civil penalties equal to the amount of the impermissible and/or excessive payments. See, e.g. *In Re David Scribner 2008*, File No. 2010-018 (violation of General Statutes § 9-607 (g) (2) (L) for impermissible payment of \$1,400 to the candidate's dependent child; \$1,400 forfeiture.); *In Re Garofalo*, File No. 2010-049 (violation of General Statutes § 9-607 (g) (2) (L) for impermissible payment of \$520 to candidate's spouse; \$520 forfeiture.)
45. However, here the Commission recognizes that in considering an appropriate penalty, it is relevant that the 2008 campaign cycle was the first in which the limitation on post-election "thank you" advertising and the prohibition on payments to non-immediate family members applied. Moreover, the Commission also takes note that this is a case of first impression; there is no direct precedent for a standalone violation of either § 9-706-2 (a) (13) or § 9-706-2 (b) (3) and/or (4) of the Regulations of Connecticut State Agencies.
46. The Respondents waive:
 - 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.
47. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him concerning this matter or any other findings that appear in the Final Audit Report for the "Friends of Selim" (2008) and/or "Friends of Selim" (2010) candidate committees.
48. 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.

ORDER

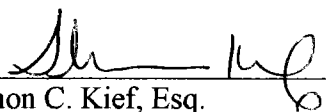
IT IS HEREBY ORDERED that Respondent Patricia Goodin shall pay a civil penalty of Eight Hundred and Fifty Dollars (\$850) and that both Respondents will henceforth strictly comply with the requirements of General Statutes § 9-607 (g) and §§ 9-706-2 (a) & (b) of the Regulations of Connecticut State Agencies.

The Respondents:

For the State of Connecticut:



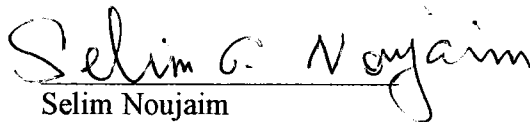
Patricia Goodin
214 Scott Road
Waterbury, CT

BY: 

Shannon C. Kief, Esq.
Legal Program Director
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 8-12-11

Dated: 8/27/11



Selim Noujaim
104 Dinatali Drive
Waterbury, CT

Dated: 8/12/2011

Adopted this 24th day of August of 20 11 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission