

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Rosemary Wong, Stratford

File No. 2009-101

**AGREEMENT CONTAINING CONSENT ORDER AND CIVIL PENALTY FOR
VIOLATIONS OF CONNECTICUT GENERAL STATUTES**

This agreement by and between Lydia Martinez, of the City of Bridgeport, County of Fairfield, State of Connecticut, hereinafter referred to as 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. Complainant was a candidate for Bridgeport City Council from the 137th District at the September 15, 2009 Democratic primary (hereinafter "Primary") in the City of Bridgeport. Complainant brought this complaint against Respondent who was also a candidate for the City Council from the 137th District at the Primary, and other individuals prior to the aforementioned primary.
2. Complainant alleged that Respondent and other individuals had violated laws regarding the dissemination and completion of applications for absentee ballots at the Harborview Towers, a municipal public housing complex at 376 East Washington Street in the City of Bridgeport, for the Primary. Complainant specifically alleged that:
 1. Individuals *not* qualified to vote by absentee ballot completed absentee ballots at the direction of Respondent and others;
 2. Individuals circulating absentee ballot applications misled potential applicants and applicants as to the reasons absentee ballots can be used;
 3. Residents at Harborview Towers who were identified as having completed absentee ballot applications and as having received absentee ballots for the Primary, did not complete the respective absentee ballot application; and,
 4. Individuals completed and mailed absentee ballots on behalf of residents of Harborview Towers who were not legally qualified to do so.

3. Additionally, Complainant alleged that James M. Brown, a resident of Harborview Towers, and Kathleen C. Arroyo violated elections law as they assisted Respondent in disseminating absentee ballot applications and canvassing on Respondent's behalf at Harborview Towers.
4. The Commission addresses the allegations, detailed in paragraph 3 above, regarding Mr. Brown under a separate document. With regards to the allegations pertaining to Ms. Arroyo, upon investigation, the Commission dismisses such allegations for want of sufficient evidence, and therefore takes no further action against Ms. Arroyo.
5. Complainant, as detailed in paragraph 2 above, alleged that residents of Harborview Towers completed absentee ballot applications and voted by absentee ballot at the Primary who were ineligible to do so.
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 is unable to appear at his polling place during the hours of voting for any of the following reasons: (1) His active service with the armed forces of the United States; (2) his absence from the town of his voting residence during all of the hours of voting; (3) his illness; (4) his physical disability; (5) the tenets of his religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his duties as a primary, election or referendum official at a polling place other than his 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. The municipal clerk shall not distribute with an absentee ballot application any material which promotes the success or defeat of any candidate or referendum question. The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application. The application shall be signed by the applicant under the penalties of false statement in absentee balloting on (1) the form prescribed by the Secretary of the State pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the

absentee ballot applicant followed by the word "by" and his own signature. 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.

...

(c) The municipal clerk shall check the name of each absentee ballot applicant against the last-completed registry list and any supplementary registry lists on file in the municipal clerk's office. If the name of such applicant does not appear on any of such lists, the clerk shall send such applicant a notice, in a form prescribed by the Secretary of the State, to the effect that (1) the applicant's name did not appear on the list of electors of the municipality at the time the application was processed, and (2) unless the applicant is admitted or restored as an elector of the municipality by the applicable cutoff dates an absentee ballot will not be mailed to him. Such notice shall not be so mailed if, prior to the mailing of the notice, the registrars provide the clerk with reliable information showing the absentee ballot applicant to be an elector of the municipality.

(d) An absentee voting set shall consist of an absentee ballot, inner and outer envelopes for its return, instructions for its use, and if applicable, explanatory texts concerning ballot questions, as provided for in sections 2-30a and 9-369b. No other material shall be included with an absentee voting set issued to an applicant except as provided in sections 9-153e and 9-153f or where necessary to correct an error or omission as provided in section 9-153c.

(e) Upon receipt of an application, the municipal clerk shall, unless a notice is mailed to the applicant pursuant to subsection (c) of this section, write the serial number of the outer envelope included in the absentee voting set to be issued to the applicant in the space provided for that purpose on the application form. Sets shall be issued to applicants in consecutive ascending numerical order of the envelope serial numbers, and the clerk shall keep a list of the numbers indicating beside each number the name of the applicant to whom that set was issued. The list shall be preserved as a public record as required by section 9-150b.

...

(g) On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, within twenty-four hours, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the clerk shall comply with the request. Any absentee voting set to be mailed to an applicant shall be mailed to the bona fide personal mailing address shown on the application. Issuance of absentee voting sets shall also be subject to the provisions of subsection (c) of this section, section 9-150c and section 9-159q concerning persons designated to deliver or return ballots in cases involving unforeseen illness or disability and supervised voting at certain health care institutions.

[Emphasis added.]

8. Upon investigation, it was determined that those Harborview Towers residents identified by Complainant as having voted at the Primary by absentee ballot attested to eligibility requirements on requisite absentee ballot applications that were approved by the Bridgeport City Clerk pursuant to General Statutes § 9-140.
9. Furthermore, the investigation did not reveal applicants whose assertions of eligibility as provided by § 9-135, and described in paragraph 8 above, were fraudulent or otherwise suspect, or that the Bridgeport City Clerk otherwise issued absentee ballots to such individuals other than as proscribed by the aforementioned statute. The Commission for the reasons so stated therefore dismisses this allegation.
10. Complainant alleged, as detailed in paragraph 2 above, that Respondent and her campaign workers misled potential applicants as to the eligibility requirements for use of absentee ballots at the Primary when they were canvassing with absentee ballot applications at Harborview Towers.
11. Pursuant to General Statutes § 9-135 (b), no person shall misrepresent the eligibility requirements for voting by absentee ballot to any elector or prospective absentee ballot applicant.
12. Upon investigation, the Commission finds that those individuals who completed absentee ballot applications for the Primary denied that either Respondent or her campaign workers misrepresented the eligibility requirements for voting absentee ballot. Furthermore, as detailed in paragraphs 8 and 9 above, it was determined that individuals from Harborview Towers who did vote at the Primary by absentee ballot were deemed by the City Clerk as eligible to do so. For the reasons so stated, the Commission finds a lack of evidence regarding violations of General Statutes § 9-135 (b), and therefore dismisses this allegation.
13. Complainant alleged, as detailed in paragraph 2 above, that individuals residing at Harborview Towers identified as absentee ballot applicants, did not complete their respective absentee ballot applications alone.

14. Pursuant to General Statute § 9-140 (a), 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.” General Statute § 9-140 (a) (emphasis added). Furthermore, such signature shall be made under the penalties of false statement in absentee balloting. Finally, the Secretary of the State and the Commission have interpreted General Statutes § 9-140 (a) to apply to anyone who completes any part of the application form for the applicant. See In the Matter of a Complaint by David F. Walsh, Stafford Springs, File No. 2007-423. The application form contains, directly below the applicant’s signature block, instructions for a person rendering assistance to the applicant, to sign the application, print his/her name and provides his/her residence address and telephone number. The instructions read as follows: “To be completed by any person who assists another person in the completion of this application.”
15. Upon investigation, the Commission finds that Respondent assisted an individual (hereinafter “Resident Doe”) who resides at Harborview Towers *with an Application for Absentee Ballot (Form ED-9) for the Primary*. Furthermore, the Commission finds that the data field and signature line pertaining to the assister’s name, residence address and telephone number on the aforementioned absentee ballot application were not completed.
16. The Commission finds that Respondent failed to sign and to print her name, residence address and telephone number on the absentee ballot application that she assisted Resident Doe with described in paragraph 16 above, as required by General Statutes § 9-140 (a).
17. Furthermore, the Commission finds that Respondent violated General Statutes § 9-140 (a) by failing to sign as an assister and complete the data field information including her residence address and telephone number on an absentee ballot application for the Primary as described in paragraph 16 and 17 above.
18. Complainant alleged, as detailed in paragraph 2 above, that Respondent, a candidate for the Primary, completed absentee ballots for Harborview Towers residents.
19. Upon investigation, the Commission finds that Respondent was at the apartment of Resident Doe at Harbor View Towers, when Resident Doe reviewed and marked her absentee ballot for the Primary.

20. The Commission further finds that Resident Doe was assisted by Respondent in completing the aforementioned absentee ballot, in that Respondent explained the use of the inner and outer envelopes of the absentee ballot to Resident Doe, and instructed Resident Doe regarding marking the ballot and sealing the absentee ballot into the inner envelope. Additionally, the Commission finds that Respondent instructed Resident Doe regarding sealing the inner envelope with ballot into the outer envelope of the absentee ballot set and mailing it to the Bridgeport City Hall.

21. Upon investigation, the Commission finds that Resident Doe marked her absentee ballot, and used her absentee ballot set, at her dining table in her apartment at Harborview Towers, while the Respondent remained on a couch within approximately three feet from the aforementioned table while Resident Doe executed her absentee ballot for the Primary.

22. Connecticut General Statutes § 9-140b, provides in pertinent part:

...

(e) No (1) *candidate* or (2) agent of a candidate, political party or committee, as defined in section 9-601, *shall knowingly be present when an absentee ballot applicant executes an absentee ballot*, except (A) when the candidate or agent is (i) a member of the immediate family of the applicant or (ii) authorized by law to be present or (B) when the absentee ballot is executed in the office of the municipal clerk and the municipal clerk or an employee of the municipal clerk is a candidate or agent.

23. It is concluded that Respondent, as a candidate at the Primary, violated General Statutes § 9-140b (e) by being present while Resident Doe executed her absentee ballot for the Primary in which Respondent was a candidate as described in paragraphs 21 through 22 above.

24. The Commission notes that the evidence is insufficient to maintain that Resident Doe was instructed by Respondent on which candidates to vote for. Furthermore, the evidence indicates that Resident Doe accepted the offer by Respondent of a stamp for the aforementioned absentee ballot set and that Resident Doe used the aforementioned stamp to mail the absentee ballot set described herein for the Primary.

25. The Respondent asserts that she was *not* present, while Respondent Doe executed her ballot, notwithstanding the Commission's own finding in paragraph 21 above.
26. Furthermore, the Respondent maintains that the Commission's findings with respect to the violation of General Statutes § 9-140b are not supported by the evidence, and enters into this agreement for the *sole* purpose of avoiding further litigation pertaining to the facts herein.
27. 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.
28. 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 as an admission in any subsequent hearing, if the same becomes necessary.
29. Respondent admits all jurisdictional facts and 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.
30. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT the Respondent shall pay a civil penalty of five hundred dollars (\$500.00) to the Commission on or before November 16, 2011.

IT IS FURTHER ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of Connecticut General Statutes §§ 9-140 (a) and 9-140b (e).

The Respondent:

For the State Elections Enforcement Commission:

By: Lydia Martinez
Lydia Martinez
85 William Street
Bridgeport, CT 06608

By: Shannon Clark Kief
Shannon Clark Kief, Esq.
Legal Affairs Program Director
and Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, CT 06106

Dated: 11/18/11

Dated: 11/22/11

Adopted this 16th day of November, 2011 at Hartford, Connecticut.

Stephen F. Cashman
Stephen F. Cashman, Chairman
By Order of the Commission

**RECEIVED
STATE ELECTIONS**

NOV 21 2011

**ENFORCEMENT
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