

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Victor L. Harpley, Cromwell

File No. 2010-013

**AGREEMENT CONTAINING CONSENT ORDER FOR
VIOLATIONS OF GENERAL STATUTES**

This Agreement, by and between Alfred A. Diaz, hereinafter referred to as the "Respondent," of the Town of Cromwell, County of Middlesex, State of Connecticut and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with General Statutes § 4-177(c) and section 9-7b-54 of the Regulations of Connecticut State Agencies.

In accordance herewith, the parties agree that:

1. On October 13, 2009 William Yeske filed a *Party Committee Registration* (SEEC Form 2) with the Cromwell Town Clerk's office designating Alfred A. Diaz as the treasurer of "Yeske for Board of Selectman" (hereinafter "Yeske Committee"), and indentified the type of committee as a "Town Committee."
2. Respondent was the legally designated treasurer of the Yeske Committee at all times relevant to this complaint, and signed the certification of the above referenced SEEC Form 2, on or about October 10, 2009. Pursuant to General Statutes § 9-606 (a), as treasurer, the Respondent was responsible for authorizing and making all expenditures made by that committee and reporting those expenditures in accordance with the requirements of § 9-608.
3. Complainant alleged that the Yeske Committee paid for a robocall promoting William Yeske, *as well as* Cromwell Board of Selectmen candidates Stephen E. Bayley, Mark Corvo, and Ann Halibozek, in violation of General Statutes § 9-616. Further, Complainant alleged that Respondent violated § 9-621 by failing to provide the robocall with a proper disclaimer, and that Respondent failed to report contributions from the other candidates that were promoted by the robocall as required by § 9-608.
4. The Commission addresses allegations in this complaint as they pertain to individuals other than Respondent under separate respective documents.

5. Generally, a candidate committee may only make expenditures promoting the nomination or election of the candidate who established the committee. The law prohibits a candidate committee from making contributions to another candidate committee. General Statutes § 607 (g) (1).
6. The content of the robocall that is subject of this complaint follows:

Hi this is First Selectman Jerry Shingleton calling to remind you to vote on Tuesday between 6:00 AM to 8:00PM in Cromwell High School on Evergreen Road. Interested in career service levels, continue to manage government in a business context, to eliminate waste and to hold people accountable, we need real leadership on the Board of Selectman, with no strings attached. Vote for new energy, new ideas and new faces. Vote for Bill Yeske and his teammates Steve Bayley, Mark Corvo, and Ann Halibozek. Thank you very much. Paid and Authorized by Bill Yeske for Board of Selectman, (860) 635-6763.

There is no dispute that the candidates identified in the robocall consented to the use of their names by the Yeske Committee for the purpose of promoting their candidacies.

7. Respondent reported an expenditure by the Yeske Committee for the robocall that is the subject of this complaint on its January 10th Itemized Campaign Finance Disclosure Statement (SEEC Form 20). The aforementioned was disclosed as a November 4, 2009 expenditure to a Virginia business in the amount of \$215.76 with the description “robo calls to citizens.”
8. General Statutes § 9-616 provides in pertinent part:
 - (a) A ***candidate committee shall not make contributions to***, or for the benefit of, (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) ***another candidate committee*** except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted, and (B) 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, an expenditure by a candidate committee established by either such

candidate that benefits the candidate committee established by the other such candidate shall be permitted. ... [Emphasis added.]

9. Pursuant to General Statutes § 9-622, "illegal practices" include:

...
(10) Any person who solicits, *makes* or receives *a contribution* that is otherwise *prohibited by any provision of this chapter*. ...
[Emphasis added.]

10. Upon investigation, the Commission finds that the Yeske Committee robocall, described in paragraphs 6 and 7 above, promoted William Yeske *and* three additional candidates for Cromwell Board of Selectman, while being paid for exclusively by the Yeske Committee.¹ The Commission further finds that the expenditure for the aforementioned in-kind contribution by the Yeske Committee to three additional candidates was prohibited by General Statutes §§ 9-616 (a) and 9-622 (10).

11. The Commission concludes, for the reasons stated in paragraph 10 above, that Respondent violated General Statutes §§ 9-616 (a) and 9-622 (10), as treasurer of the Yeske Committee, by making the prohibited expenditure for the Yeske Committee robocall that promoted the candidacies of three candidates in addition to William Yeske.

12. General Statutes § 9-607 provides in pertinent part:

...
(g) (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*, 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; (ii) for a political committee, the promoting of the success or defeat of candidates for nomination and election to public office or position subject to the requirements of this chapter, or the success or defeat of referendum questions, provided a political committee formed for a single referendum question shall not promote the success or

¹ The Commission notes that had the cost of the robocall been divided *pro rata* among the candidates supported it would have been permissible pursuant to General Statutes §§ 616 (a) (5) and 9-610 (b) and that such expense sharing would have amounted to approximately \$53.94 *per* candidate.

defeat of any candidate, and provided further a legislative caucus committee may expend funds to defray costs of its members for conducting legislative or constituency-related business which are not reimbursed or paid by the state; and (iii) for a party committee, the promoting of the party, the candidates of the party and continuing operating costs of the party, and (B) "immediate family" means a spouse or dependent child of a candidate who resides in the candidate's household. ... [Emphasis added.]

13. Upon investigation, the Commission finds that the Yeske Committee robocall, described in paragraphs 6 and 7 above, promoted William Yeske who established the committee, *as well as* three additional candidates for Cromwell Board of Selectman, while being paid for exclusively by Yeske Committee. The Commission further finds that the expenditure for the aforementioned in-kind contribution by the Yeske Committee to three additional candidates was not within the lawful purpose of the Yeske Committee pursuant to § 9-607 (g) (1) (A) (i).
14. The Commission concludes, for the reasons stated in paragraph 13 above, that Respondent violated General Statutes § 9-607(g) (1) (A) (i), as treasurer of the Yeske Committee, by authorizing and making an expenditure which was not within the lawful purpose of the Yeske Committee.
15. Complainant alleged that Respondent violated General Statutes § 9-621 pertaining to disclaimer requirements and the robocall that is the subject of this complaint and detailed herein.
16. General Statutes § 9-621 provides in pertinent part:

(a) No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and ***no candidate or committee shall make or incur any expenditure*** including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication, or any web-based, written communication, ***which promotes the success or defeat of any candidate's campaign for*** nomination at a primary or ***election*** or promotes or opposes any political party or solicits funds to

benefit any political party or committee unless such communication bears upon its face (1) ***the words "paid for by" and the following:*** (A) In the case of such an individual, the name and address of such individual; ***(B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer;*** (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, ***and (2) the words "approved by" and the following:*** (A) In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; ***or (B) in the case of a candidate committee, the name of the candidate.***

(b) In addition to the requirements of subsection (a) of this section:

...

(3) ***No candidate or candidate committee*** or exploratory committee established by a candidate shall ***make or incur any expenditure for automated telephone calls which promote the success of such candidate's campaign for*** nomination at a primary or ***election*** or the defeat of another candidate's campaign for nomination at a primary or election, ***unless the candidate's name and voice are contained in the narrative of the call, before the end of such call.***

[Emphasis added.]

17. The Commission finds that the robocall, as described in paragraphs 6 and 7 above, did *not* include the voice of the candidates promoted in the narrative of the call as required by General Statutes § 9-621 (b) (3). The Commission concludes therefore that Respondent violated § 9-621, by failing to include the voices of each candidate promoted in the aforementioned robocall.

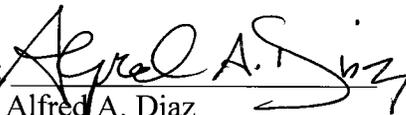
18. Finally, the Commission finds that because there were no contributions from the three candidates for the robocall, detailed in paragraphs 6 and 7 above, Respondent could *not* fail to report such contributions pursuant to General Statutes § 9-608, as alleged.
19. The Commission, for the reasons detailed in paragraph 18 above, therefore dismisses the allegation in paragraph 3 above pertaining to a violation § 9-608 by Respondent.
20. 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 Regulations of Connecticut State Agencies § 9-7b-56.
21. It is understood 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.
22. 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 challenge or contest the validity of this Agreement or Order hereinafter stated.
23. Upon the Respondent's agreement with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes §§ 9-607, 9-616, 9-621 and 9-622.

The Respondent:

For the State Elections Enforcement Commission:

By: 
Alfred A. Diaz
15 Thistle Down
Cromwell, CT 06416

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, CT 06106

Dated: May 17 2012

Dated: 5/18/12

Adopted this 23rd day of May, 2012 at Hartford, Connecticut


Stephen F. Cashman, Chair
By Order of the Commission