

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Victor Harpley, Cromwell

File No. 2010-014

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged during the 2009 municipal election, the “Shingleton for First Selectman” candidate committee leased property for its campaign headquarters at below fair market value in violation of General Statutes §§ 9-608, 9-613 & 9-622 (10).

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. The Respondents here are Rosner Family, LLC, as well as Joe Nguyen, the treasurer of “Shingleton for First Selectman” during all times relevant to the instant Complaint.
2. “Shingleton for First Selectman” (“SFFS”) was a candidate committee formed to support the candidacy of Jeremy Shingleton for First Selectman in the town of Cromwell.
3. SFFS reported two expenditures of \$300 & \$369 on 4/14/09 and 6/16/09, respectively, to lease 1,800 square feet of commercial space at 319 Main St., Cromwell, from Rosner Family, LLC, for a period of approximately three months from April through mid-July to house its headquarters during the 2009 municipal election. The candidate dropped out of the race and terminated the candidate committee in or about July 2009.
4. Complainant presented evidence, in the form of a newspaper article published in the Middletown Press, that he alleges establishes that the aforementioned rent was below-market.¹ The article concerned a proposal by the candidate in his capacity as the sitting First Selectman in Cromwell, for the Town of Cromwell to expend \$75,000-85,000 to renovate

¹ *Selectmen Against Using Old Pharmacy as Cultural Center*, Middletown Press, November 25, 2008.

the property, known locally as the former McNeil's Pharmacy building, and then lease it for use as a town cultural center for approximately \$1,500/month. No other evidence was presented in support of the Complainant's allegation.

5. Failure to accurately report an expenditure constitutes a failure to report and is a violation of General Statutes § 9-608 (c), which reads, in pertinent part:

(a) (1) Each campaign treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603, (A) on the tenth calendar day in the months of January, April, July and October, provided, if such tenth calendar day is a Saturday, Sunday or legal holiday, the statement shall be filed on the next business day, (B) on the seventh day preceding each regular state election. . . .

(c) (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: (A) *An itemized accounting of each contribution*, if any, including the full name and complete address of each contributor and the amount of the contribution; (B) in the case of anonymous contributions, the total amount received and the denomination of the bills; (C) an itemized accounting of each expenditure, if any, (Emphasis added.)

6. If the above rent was below market value, the difference between the fair market value and the amount of the expenditure would constitute a contribution to the SFFS, which SFFS must report.
7. Additionally, if the 2009 rent was below market value, then the difference between the market value and the actual payment would constitute an impermissible contribution by Rosner Family, LLC, a business entity, in violation of General Statutes § 9-613, which reads, in pertinent part:

(a) No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter

or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. *No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party. . . .* (Emphasis added.)

8. Finally, accepting such an impermissible contribution from a business entity would also constitute a violation by Respondent Nguyen, as treasurer of SFFS, of General Statutes § 9-622 (Rev. to June 8, 2010), which reads, in pertinent part:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

...

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter;

9. Respondent Nguyen and a representative of Rosner Family, LLC submitted supporting facts, detailed below, and statements asserting that the value for the property was fair. Respondent Rosner Family, LLC also submitted responses to additional questions from Commission staff concerning the rental property.
10. Both Respondents assert that the property had been unoccupied for a period of at least two years prior to the use by SFFS. Respondent Nguyen asserts that the parties entered into an oral agreement to allow SFFS use the space on a part-time basis. The committee was allowed to hang signs on the storefront and hold meetings with candidate committee officers and volunteers from time to time. No phone lines were available on the premises and the property was lightly used. SFFS was required to keep the premises in "show-ready" condition and the landlord was permitted to show the property at any time. If the landlord was able to find a permanent tenant, the committee was required to vacate immediately.

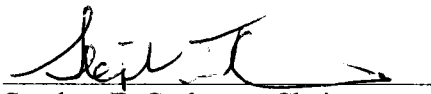
11. Further, the Respondents assert, the landlord was permitted to use the space, as-needed and when not being used by the committee; Respondent Nguyen asserts that the landlord used the space for his own purposes at least once for a family event during the rental period.
12. Additionally, the Respondents assert that as part of the agreement, the candidate committee helped clean up the property, including removing garbage, painting, replacing ceiling tile, and cleaning floors and counter tops in order to “make it more marketable” for the landlord. The Respondents assert that the rental price was set based on not only the fair market value of the property in its condition at the time, but also took into account approximate offsets created by the work that the SFFS did on the property to get it into “show-ready” condition.
13. Howard Rosner, principal member of Rosner, LLC, asserts that since the Downtown Cromwell area, in which the property was situated, was under construction, he was unable to rent the premises for two years at the time SFFS approached him about utilizing the space. He asserted that “[w]hen [SFFS] approached me to rent premises for [the] campaign, I saw an opportunity to get some exposure for the property and a little income, which helped me to pay some expenses. Having some cash flow coming in, compared to \$0 made sense to me. This was a business decision I made on my own.”
14. Considering the aforesaid, the Commission finds that there is insufficient evidence to establish that the commercial space rented by the “Shingleton for First Selectman” candidate committee during the 2009 municipal campaigns was rented at anything other than reasonable and fair market value under the facts and circumstances presented here. While the newspaper article presented by the Complainant is *some* evidence of a monthly market value of \$1,500 for the former McNeil’s Pharmacy building, this value assumes \$75,000-85,000 worth of improvements to the building. No evidence has been presented by the Complainant of the value of the premises at the time that it was rented to SFFS and per the terms under which the premises were utilized. Accordingly, the matter should be dismissed.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter is dismissed.

Adopted this 24th day of August, 2011 at Hartford, Connecticut.


Stephen F. Cashman, Chairperson
By Order of the Commission