

JAN 24 2011

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT
COMMISSION

In the Matter of a Complaint by
Robert S. Kissel, Hamden

File No. 2010-142

AGREEMENT CONTAINING HENCEFORTH ORDER FOR VIOLATIONS
OF CONNECTICUT GENERAL STATUTES §§ 9-265

This agreement by and between Marjorie Clark of the Town of Hamden, County of New Haven, State of Connecticut, hereinafter referred to as the Respondent, and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Respondent served as the Moderator of the 7th District polling place in the Town of Hamden during the November 2, 2010 presidential election.
2. On November 8, 2010, Complainant received the Office of the Secretary of the State's election results for the Town of Hamden and determined that the write-in vote he had cast for Boaz Itshaky, a registered write-in candidate for the office of United States Representative in Congress for the 3rd District, had not been recorded and included within the reported election results.
3. General Statutes § 9-265 (a) provides in pertinent part:

A write-in vote for an office, cast for a person who has registered as a write-in candidate for the office pursuant to subsection (b) of section 9-175 or section 9-373a, shall be counted and recorded. Except as otherwise provided in this section, a write-in vote cast for a person who has not registered shall not be counted or recorded. [Emphasis added.]

4. Section 9-242a-23 of the Regulations of Connecticut State Agencies further provides the individuals responsible for counting and recording the write-in ballots. That provision provides as follows, in pertinent part:

The polling place officials shall complete the moderator's returns and shall be guided by instructions of the Secretary of the State. The moderator and assistant registrars of voters shall record on the moderator's returns the voting tabulator result totals for each candidate and question. **The moderator and assistant registrars of voters shall unlock and remove all the ballots from the write-in bin. They shall record the number of ballots in the write-in bin. They shall count by hand the votes cast of the office in which the elector indicated a write-in vote. They shall record on the moderator's returns the write-in votes in accordance with the law governing write-in ballots.**

5. Commission staff conducted a comprehensive field investigation concerning any and all write-in votes cast in the polling place for the 7th voting district for the November 2, 2010 election. The investigation reveals that a total of six (6) write-in votes were recorded by the optical scan voting machine, two (2) of which were recorded for United States Representative. In addition, Commission staff conducted a comprehensive review of the actual ballots cast on Election Day via the optical scan voting system and identified six (6) ballots cast for write-in

candidates. Of those six (6) ballots, two (2) were cast for United States Representative. Of those two ballots, one (1) was cast for Boaz Itshaky. Another was cast for Brian Hill, who was actually a registered write-in candidate for the office of United States Senator. With respect to the other four (4) write-in votes, one was cast for Bryant Hill, and the other two (2) were cast for individuals that were not registered write-in candidates.

6. However, with respect to all write-in candidates, the Moderator's return merely recorded three (3) votes for Brian Hill for the office of United States Senator, which itself was an error as only two (2) votes were properly cast for said candidate. Furthermore, as alleged by the Complainant, no write-in vote was counted or recorded for Boaz Itshaky.

7. The Commission therefore concludes that the Respondent violated General Statutes § 9-265 by failing to properly count and record the write-in votes cast at the polling place for Hamden's 7th voting district.

8. We note that this is the second time this Complainant has identified a problem with the canvass of the write in ballots in Hamden's 7th Voting District and the manner in which they are recorded. In 2008, the Commission ordered another individual that acted as the head moderator of the Town of Hamden to strictly comply with General Statutes §§ 9-265 and 9-314 after he improperly recorded the number of write in votes cast in that election. *See In the Matter of a Complaint by Robert Kissel*, Hamden, File No. 2008-159.

9. In the present case, the Respondent indicated that she believed that she had properly counted and recorded the write-in ballots but may have erred in doing so as the polling place was extremely busy at the time said ballots were canvassed and she was exhausted. After reviewing her Moderator's Return, she asserts that she believes her error occurred because she inadvertently overlooked Boaz Itshaky's name on the Secretary of the State's list of registered write-in candidates which caused her to fail to include that name in her Moderator's Return when tallying the properly cast write-in ballots. She maintains that her error was completely unintentional and the Commission has not been presented with any evidence to the contrary.

10. Finally, the investigation revealed that the Respondent does not have any history of previous violations of election law. Nevertheless, the Respondent's error may have contributed to the perception that write-in votes are purposely and/or carelessly disregarded. As such, in addition to the Order set forth herein, the Commission strongly advises all election officials to exercise extreme caution to ensure that all write-in votes are properly counted and recorded.

11. 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 into after a full hearing and shall become final when adopted by the Commission.

12. 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 to challenge or contest the validity of the Order entered into pursuant to this agreement.

13. Upon the Respondent's agreement to comply with the Order hereinafter stated and to promptly issue the letter of apology to the Complainant, the Commission shall not initiate any further proceedings against her concerning this matter.

14. 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 the Respondent shall henceforth fully comply with the reporting requirements of General Statutes § 9-265.

The Respondent

For the State of Connecticut

By:



Marjorie Clark
Hamden, Connecticut

By:



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

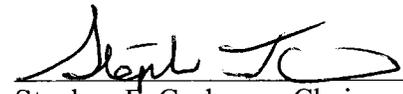
Dated:

1-20-11

Dated:

1/24/11

Adopted this 26th day of January, 2011 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chairman
By Order of the Commission