

JUN 06 2011

STATE OF CONNECTICUT      ENFORCEMENT COMMISSION  
STATE ELECTIONS ENFORCEMENT COMMISSIONIn the Matter of a Complaint by Helen Nitkin,  
Greenwich

File No. 2011-001

AGREEMENT CONTAINING CONSENT ORDERS  
AND CIVIL PENALTIES

This agreement by and between Helen W. Nitkin of the Town of Greenwich, County of Fairfield (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. The complaint and investigation in this matter concern possible violations of Connecticut General Statutes § 9-612 (g), by Respondent who is owner of HBN Nitkin Group, Inc. (hereinafter "HBN Nitkin"). The Complaint was self-reported by an affidavit prepared by her attorney on behalf of Respondent.
2. Complainant sought a ruling on an alleged prohibited state contractor contribution by Respondent so that HBN Nitkin could continue contracting with the Capital City Economic Development Authority (hereinafter "CCEDA"), a quasi-public agency established by the General Assembly, and the Office of Policy Management, which is the Governor's staff agency and is an agency within the executive branch.
3. For purposes of the state contractor contribution ban CCEDA as described in paragraph 2 above is a "quasi-public agency" pursuant to General Statutes § 9-612 (g) (1) (A). Furthermore, for purposes of the state contractor contribution ban OPM as described in paragraph 2 above is a "state agency" pursuant to § 9-612 (g) (1) (B).
4. By way of background, HBN Nitkin is a business entity that operates for profit. Specifically, HBN Nitkin is a real estate investment, development and management firm with an office and principal place of business in Greenwich, Connecticut. Respondent is the President and Chairman of HBN Nitkin.
5. HBN Nitkin, through its wholly owned subsidiary HBN Front District, Inc. (hereinafter "HBN Front District"), is the developer of the Front Street portion of Adrian's landing development in the City of Hartford, Connecticut. HBN Front District is listed on the State Elections Enforcement Commission "*List Two - State Contractors Prohibited from contributing to Statewide Offices,*" and was so at all times relevant to the contributions made by Respondent and described herein.

6. HBN Nitkin, and/or HBN Front District, has the three current agreements with the State of Connecticut, all of which remain in effect:

1. *Second Amended and Restated Development Agreement, June 19, 2008, Capital City Economic Development Authority and State of Connecticut, acting through its Office of Policy and Management ("Development Agreement"). The Development Agreement pertains to development rights and financial assistance. At the time of the contribution in question the amount paid was \$4,503,172.12, plus reimbursement of development costs allocated to CCEDA/State. This contract was entered into on June 19, 2008. The total contract value is \$6,150,000, plus reimbursement of development costs allocated to CCEDA/State.*

2. *Sales and Use Tax Relief Program Implementing Agreement, November 7, 2008, Connecticut Development Authority ("Tax Abatement Agreement"). The Tax Abatement Agreement pertains to abatement of sales and use tax on construction materials. At the time of the contribution in question the amount of taxes abated was \$293,814.87. This contract was entered into on November 7, 2008. The total contract value is up to \$1,000,000 of taxes abated.*

3. *Assistance Agreement (Urban Act Grant), October 31, 2008, State of Connecticut acting through its Department of Economic and Community Development ("Grant Agreement"). The Grant Agreement pertains to urban development. At the time of the contribution in question the contract had paid \$7,449,988.01. This contract was entered into on October 31, 2008. The total contract value is \$7,500,000.*

7. Regarding Contract 3 above, Respondent claims to have received a *Notice to Executive Branch State Contractors and Prospective State Contractors* (acknowledgement (SEEC Form 10), but is unable to locate a copy of the executed form at the time of this recommendation.

8. Respondent is not a signatory to any of the aforementioned contracts. On or about December 20, 2010 Respondent completed an OPM Ethics Form 1 indicating that it was an “annual update,” and disclosing that she had made the contribution that is the subject of this complaint and investigation.
9. Respondent made a single on-line contribution on April 28, 2010, to *Dan Malloy for Governor*, a candidate committee for statewide office, in the amount of \$100.00 and made no other contributions to party committees (including town committees), candidate committees or political committees. Respondent failed to disclose that she was a principal of a state contractor to Dan Malloy for Governor.
10. Respondent asserts that she was unaware of the restriction on state contractors making contributions to committees for candidates seeking statewide office at the time of her April 28, 2010 contribution described in paragraph 8 above. Furthermore, not until 2009, with the death of her husband, did Respondent become president of HBN Nitkin, or have involvement with the oversight or operations of the company.
11. Respondent asserts that suspension of the contractual relations between HBN Nitkin and CCEDA and OPM would interrupt continued development of the Front Street project “...and create considerable hardship on HBN and CCEDA and OPM.”
12. At the time the prohibited contribution was made, General Statutes § 9-612 provided, in pertinent part:

(g) (1) (F) “***Principal of a state contractor*** or prospective state contractor” ***means*** (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) ***an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties***, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

...(2)(A) No state contractor, prospective state contractor, ***principal of a state contractor*** or principal of a prospective state contractor, with regard to a state contract solicitation with or from

a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, **shall make a contribution to**, or solicit contributions on behalf of **(i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer**, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

...

**(C) If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission**, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited **unless the commission determines that mitigating circumstances exist concerning such violation**. No violation of the prohibitions contained in subparagraph (A) or (B) of this subdivision shall be deemed to have occurred if, and only if, **the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made**, ...

[Emphasis added.]

13. The Commission finds that HBN Nitkin, as a business entity which maintains three separate agreements with the State of Connecticut and its agencies or quasi-public agencies as detailed in paragraph 6 above, is a “state contractor” pursuant to General Statutes § 9-610 (g) (1) (D) and pursuant to the state contractor ban.
14. The Commission finds that Respondent is president of HBN Nitkin, and was so at all times relevant to this complaint and investigation. The Commission concludes based on this finding that Respondent as president of HBN Nitkin, a state contractor, is a principal of a state contractor pursuant to § 9-612 (g) (1) (F) (1) (ii).
15. The Commission finds, as detailed in paragraph 8 above, that on April 28, 2010 Respondent made a single contribution online to *Dan Malloy for Governor*, a candidate committee for statewide office.
16. The Commission finds that the contribution described in paragraph 9 above was not returned within the statutory “safe harbor” of 30 days from the time of the contribution or not later than 30 days from the filing date of the reporting period in which it was made pursuant to § 9-612 (g) (2) (C).

17. The Commission concludes that the evidence supports the finding that Respondent violated Statutes § 9-612 (g) by making a \$100.00 prohibited contribution to a candidate committee for statewide office as described in paragraph 9 above as a principal of the state contractor HBN Nitkin.
18. Respondent asserts that she was unaware of the restriction on state contractors making contributions to committees for candidates seeking statewide office at the time of the contribution described in paragraph 9 above, and the Commission finds no evidence to contradict this assertion.
19. The Commission finds that pursuant to General Statutes § 9-612(g), a mitigating circumstances analysis is not reached unless the Commission determines that a violation has occurred. Therefore, the Commission finds that the violation by Respondent as concluded in paragraphs 17 above, of the state contractor contribution ban allows the Commission to determine whether “mitigating circumstances” exist concerning such violations pursuant to General Statutes § 9-612 (g) (2) (C).
20. General Statutes § 9-612 (g) (2) (C) provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether mitigating circumstances exist concerning the violation. If mitigating circumstances concerning the violation are found by the Commission, the contractual penalty is not automatic, but the awarding agency retains discretion to amend a contract or award a new contract. The agency may still void a contract in its discretion if a violation of the state contractor contribution or solicitation ban occurs, even if mitigating circumstances are found. General Statutes § 9-612 (g).
21. In determining whether circumstances are “mitigating,” the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondent, as well as contracts and agreements between HBN Nitkin and HBN Front Street and CCEDA, OPM and the State of Connecticut, that would, although not excusing the conduct, tend to reduce the harm the state contractor contribution ban is designed to prevent.
22. The Commission notes that the contribution ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees and exploratory committees for statewide office could wield over those state actors awarding such contracts and prevent awarding of contracts in exchange for campaign contributions.
23. The Commission finds a lack of evidence that the contributions described in this agreement were made in connection with any request for or offers of assistance between Respondent and the agents or representatives of the *Dan Malloy for Governor*, CCEDA and OPM, for the purpose of obtaining agreements with the aforementioned quasi-public agency or agency, or with the State of Connecticut.

24. The Commission additionally finds that there is a lack of evidence that the aforementioned contribution recipient was in the position to influence the decision making of either CCEDA or OPM, or that Mr. Malloy or members or agents of his gubernatorial candidate committee were employed by or affiliated with the aforementioned entities. Finally, the Commission finds a lack of evidence that either the recipient or her agents or representatives acted on behalf of either party in relation to the agreements between HBN Nitkin and HBN Front Street and CCEDA, OPM and the State of Connecticut.
25. It is the recommendation of counsel that “mitigating circumstances” be found, such that pursuant to § 9-612(g)(2)(C), HBN Nitkin and HBN Front Street *not* be prevented from exercising or amending its rights under future or existing agreements and contracts between them and CCEDA, OPM and the State of Connecticut . Under the circumstances detailed herein, such mitigating circumstances include:
  1. Respondent self reported to the Commission, by filing this complaint;
  2. When the Respondent made the contribution which is subject to this complaint, it was over the internet and there was no discussion about Mr. Malloy helping either HBN Nitkin or HBN Front Street obtain contracts with CCEDA or with any other state agency or department, and there was no expectation that Mr. Malloy would provide such assistance to Respondent in obtaining such contracts;
  3. Respondent became president of HBN Nitkin by operation of law *after* both the death of her spouse and the execution of these contracts between HBN Nitkin and CCEDA, OPM and the State of Connecticut, and,
  4. Respondent at the time of the contribution that is subject of this complaint was not aware of the restrictions on campaign contributions that occurred with her becoming president of HBN Nitkin, and had not been made so by her attorney.
26. The Commission finds based on the factors detailed in paragraph 25 above that “mitigating circumstances” existed pertaining to the prohibited contribution made by Respondent and detailed herein pursuant to § 9-612 (g) (2) (C), such that HBN Nitkin and HBN Front Street *not* be prevented from exercising or amending its rights under future or existing contracts between it and CCEDA, OPM and the State of Connecticut.

27. The Commission further concludes that the policy behind General Statutes § 9-612 (g) and its ban to avoid “pay-to-play” was not circumvented under the facts and circumstances of this case, and therefore allowing contracts and agreements and the contracting process to move forward, despite the prohibited contribution and violation by Respondent, does not compromise the state’s interests to insure integrity in its campaign financing system.
28. Accordingly, the Commission concludes that the mitigating circumstances concerning the violations by Respondent do not bar CCEDA, OPM or the State of Connecticut pursuant to General Statutes §9-612 (g) from executing its current agreements as detailed in paragraph 6 above with HBN Nitkin and HBN Front Street or satisfying or executing its existing or future contract obligations with the aforementioned, based on Respondent’s violation detailed herein.
29. 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
30. 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.
31. 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.
32. Upon 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 henceforth strictly comply with the requirements of General Statutes § 9-612 (g).

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall each pay a civil penalty of two hundred and fifty dollars (\$250.00) to the Commission on or before May 18, 2011.

IT IS HEREBY FURTHER ORDERED THAT the following "mitigating circumstances" pursuant to General Statute § 9-612 (g) are found pertaining to the matter detailed herein:

1. Respondent self reported to the Commission, by filing this complaint;
2. When the Respondent made the contribution which is subject to this complaint, it was over the internet and there was no discussion about Mr. Malloy helping either HBN Nitkin or HBN Front Street obtain contracts with CCEDA or with any other state agency or department, and there was no expectation that Mr. Malloy would provide such assistance to Respondent in obtaining such contracts;
3. Respondent became president of HBN Nitkin by operation of law after both the death of her spouse and the execution of these contracts between HBN Nitkin and CCEDA, OPM and the State of Connecticut, and,
4. Respondent at the time of the contribution that is subject of this complaint was not aware of the restrictions on campaign contributions that occurred with her becoming president of HBN Nitkin, and had not been made so by her attorney.

The Respondent

For the State of Connecticut

BY: 

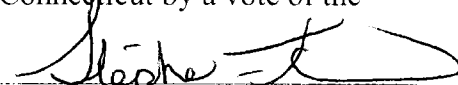
Dated:

BY:  Dated: 6/6/11

Helen W. Nitkin, President  
Nitkin Group, Inc.  
Fawcett Place  
Greenwich, Connecticut

Shannon Clark Kief, Esq. HBN  
Legal Program Director and One  
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Adopted this <sup>22<sup>nd</sup></sup> ~~18<sup>th</sup>~~ day of <sup>June</sup> May, 2011 at Hartford, Connecticut by a vote of the Commission.

  
Stephen F. Cashman, Chairperson  
By Order of the Commission