

JUN 16 2011

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT COMMISSION

In the Matter of a Complaint by Mark Brouillard, File No. 2011-057
Woodstock

AGREEMENT CONTAINING CONSENT ORDER
AND CIVIL PENALTIES

This agreement by and between Steven Townsend and Marjolaine Townsend of the Town of Brooklyn, County of Windham (hereinafter referred to as Respondents), 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 Respondents Steven and Marjolaine Townsend, the owner and owner's spouse respectively, of Northeast Development Company, L.L.C. (hereinafter "Northeast"). The Complaint was self-reported by an affidavit prepared by their attorney on behalf of Respondents.
2. Complainants sought rulings on alleged prohibited state contractor contributions so that Northeast could continue contracting with the Connecticut Department of Public Works (hereinafter "DPW"), for a lease of real estate used by Quinebaug Valley Community College (hereinafter QVCC), for its Willimantic, Connecticut campus.
3. For purposes of the state contractor contribution ban DPW and QVCC as described in paragraph 2 above are "state agencies" pursuant to General Statutes § 9-612 (g) (1) (B). Northeast is a privately-owned real estate investment company that purchases and leases property. Northeast is a business entity that operates for profit.
4. In March 2004 Northeast purchased property from its owners, that was under lease (hereinafter the "Lease") with the DPW, to be used by QVCC as a campus in Willimantic, Connecticut. The Lease was originally entered into on March 30, 1999. By letter dated March 23, 2004 the lease was renewed for an additional five years, commencing on July 30, 2004 and terminating on July 29, 2009.
5. The extension of the "Lease" was proposed by a new lease (hereinafter "New Lease") on November 9, 2010. The New Lease approval remains pending between Northeast and QVCC/DPW subject to the outcome of this complaint and investigation. The Lease had an original monthly rental amount of \$16,920.63 per month, which by terms of the lease has increased, and which Northeast has collected.

6. Respondents Marjolaine and Steven Townsend each made a \$375.00 contribution to Friends of Susan, Inc., an exploratory committee for Susan Bysiewicz formed to determine whether to seek nomination or election for statewide office for the November 2, 2010 election.
7. Respondents made their contributions on or about May 5, 2009. Respondent Steven Townsend is the owner of 5% or more of Northeast and Respondent Marjolaine Townsend is his spouse.
8. 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;

(B) 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 the General Assembly 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 state senator or state representative, (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.]

9. The Commission finds that for purposes of the state contractor ban, Northeast as a business entity is a "state contractor" pursuant to General Statutes § 9-610 (g) (1) (D). Further, pursuant to General Statutes § 9-612 (g) (1) (F) (i) Respondent Steven Townsend as an owner of 5% or more of state contractor Northeast is a "principal" of a state contractor for the purposes of the state contractor ban. Respondent Marjolaine Townsend as the spouse of the principal of a state contractor is also a principal subject to the state contractor contribution ban pursuant to § 9-612 (g) (1) (F) (v).
10. The Commission finds, as detailed in paragraph 6 above, that on May 5, 2009. Respondents each made a contribution of \$375.00 to *Friends of Susan, Inc.*, Susan Byciewicz' exploratory committee to determine whether to seek nomination or election for statewide office.
11. The Commission finds that the contributions described in paragraph 6 above were 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).
12. The Commission concludes that the evidence supports the finding that, as principals of the state contractor Northeast, Respondents violated General Statutes § 9-612 (g) by each making a \$375.00 prohibited contribution to an exploratory committee that was formed to determine whether to seek the election or nomination to statewide office, as described in paragraph 2 above.
13. Upon investigation, Respondents asserted that they were unaware that a principal or the spouse of a principal in a limited liability company that leased property to the State of Connecticut was prohibited from making a contribution. Furthermore, Respondents asserted that this was a "good faith" error on their part and the campaign contributions were not made in any way to influence the State of Connecticut in extending the existing lease.
14. The Commission finds no specific evidence upon investigation to contradict Respondents' assertions detailed in paragraph 14 above.
15. Respondents assert that they were not aware of the state contractor contribution ban at the time of the two contributions described above.
16. The Commission finds that pursuant to General Statutes § 9-612(g), a mitigating circumstances analysis must be reached when the Commission determines that a violation has occurred. Therefore, the Commission finds that the violation by Respondents as concluded in paragraphs 13 above, of the state contractor contribution ban and the Commission must determine whether "mitigating circumstances" exist concerning such violations pursuant to General Statutes § 9-612 (g) (2) (C).

17. General Statutes § 9-612 (g) (2) (C) provides possible relief from the mandatory contract penalty by allowing the Commission to determine whether mitigating circumstances exist concerning the violation. If mitigating circumstances concerning the violation are found by the Commission, the contract 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).
18. In determining whether circumstances are “mitigating,” the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondents, as well as contracts and agreements between Northeast and DPW, QVCC 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.
19. 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.
20. 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 Respondents and Susan Byciewicz, the agents or representatives of the Friends of Byciewicz, Inc., DPW and QVCC, for the purpose of obtaining agreements with the aforementioned state agencies, or with the State of Connecticut.
21. 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 DPW or QVCC, or that Ms. Byciewicz or members or agents of her exploratory 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 Northeast and DPW, QVCC and the State of Connecticut.
22. It is the recommendation of counsel that “mitigating circumstances” be found, such that pursuant to § 9-612(g)(2)(C), Northeast not be prevented from exercising or amending its rights under future or existing contracts between it and the Willimantic branch of QVCC. Under the circumstances detailed herein, such mitigating circumstances could include:
 1. Respondents self reported to the Commission, by filing this complaint;
 2. When Respondents made the aforementioned contributions to Friends of Susan, Inc., there was no discussion about the candidate helping Northeast obtaining contracts or contract extensions with QVCC, or with any other state agency or department, and there was no

- expectation that the candidate would provide assistance to Northeast in obtaining such contracts or contract extensions;
3. Respondents at the time of the contributions were not aware of the restrictions on campaign contributions by principals of state contractors; and,
 4. At all times relevant to this complaint and investigation the aforementioned candidate was not in a position to influence the awarding of contracts or contract extensions by DPW and QVCC.
23. The Commission finds based on the factors detailed in paragraph 23 above that "mitigating circumstances" existed pertaining to the prohibited contributions made by Respondents and detailed herein pursuant to General Statutes § 9-612 (g) (2) (C), such that Northeast *not* be prevented from extending the Lease detailed herein, or otherwise exercising or amending its rights under future or existing contracts between it and DPW, QVCC and the State of Connecticut.
24. 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 contributions and violation by Respondents, does not compromise the state's interests to insure integrity in its campaign financing system.
25. Respondents admit all jurisdictional facts and agree 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. Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
26. 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 Respondents and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
27. Respondents waive:
- 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.
28. Upon Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT the Respondents shall henceforth strictly comply with the requirements of General Statutes § 9-612 (g).

IT IS HEREBY FURTHER ORDERED THAT the Respondents shall each pay a civil penalty of ~~two~~^{five} hundred and fifty dollars (\$500.00) to the Commission on or before June 22, 2011. *SFC*

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. Respondents self reported to the Commission, by filing this complaint;
2. When Respondents made the aforementioned contributions to Friends of Susan, Inc. there was no discussion about the candidate helping Northeast obtaining contracts or contract extensions with QVCC, or with any other state agency or department, and there was no expectation that the candidate would provide assistance to Northeast in obtaining such contracts or contract extensions;
3. Respondents at the time of the contributions were not aware of the restrictions on campaign contributions by principals of state contractors; and,
4. At all times relevant to this complaint and investigation the aforementioned candidate was not in a position to influence the awarding of contracts or contract extensions by QVCC.

The Respondents

For the State of Connecticut

BY:

Dated:

Steve Townsend 6/13/11
Steven Townsend
169 Barrett Hill Road
Brooklyn, Connecticut

BY:

Dated:

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

BY:

Dated:

Marjolaine Townsend 6/13/11
Marjolaine Townsend
169 Barrett Hill Road
Brooklyn, Connecticut

Adopted this 22nd day of June , 2011 at Hartford, Connecticut by a vote of the Commission.

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