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ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
James D. Diamond, Stamford

File No. 2011-139

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Kathleen A. Murphy, of the City of Stamford, County of Fairfield, State of Connecticut, hereinafter referred to as "Respondent," and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with the Regulations of Connecticut State Agencies § 9-7b-54 and General Statutes § 4-177 (c). In accordance herewith, the parties agree that:

1. The *Voice of the People 2011 Committee* (hereinafter "VoP 2011 Committee") was a political slate committee formed by the municipal candidates Cynthia Reeder, Robert Kolenberg and Joseph Tarzia as their sole funding vehicle for the Stamford Board of Finance in the November 8, 2011 municipal election in the City of Stamford. Respondent was *VoP 2011 Committee* treasurer, and Mr. Paul J. Nadziejko was *VoP 2011 Committee* deputy treasurer, at all times relevant to this complaint.
2. Complainant, alleged that Respondent, as treasurer of *VoP 2011 Committee* violated General Statutes § 9-608 by failing to disclose various expenditures and §§ 9-601a, 9-613 and 9-622 by receiving prohibited ad book purchases for a program booklet. Specifically, complainant alleged that:
 - (A) Respondent received \$700.00 worth of prohibited receipts from ad book sales for a *VoP 2011 Committee* program booklet, in that as a political slate committee it was not eligible to use this exception to the definition of a "contribution;"
 - (B) Incorrectly disclosed an expense incurred but not paid in the amount of \$4,784.00 by listing the wrong creditors in violation of § 9-608; and,
 - (C) Failed to disclose an expense incurred but not paid for a citywide mailer in violation of § 9-608.
3. This agreement pertains to a settlement with Respondent, while any additional settlement between the Commission and Mr. Nadziejko is addressed in a separate document.

4. General Statutes § 9-608, provides in pertinent part:

(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, including the full name and complete address of each payee, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be; (D) ***an itemized accounting of each expense incurred but not paid, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee;*** ... (F) for each business entity or person purchasing advertising space in a program for a fund-raising affair, the name and address of the business entity or the name and address of the person, and the amount and aggregate amounts of such purchases; ...
[Emphasis added.]

5. General Statutes § 9-601a, provides in pertinent part:

...
(b) As used in this chapter and sections 9-700 to 9-716, inclusive, "contribution" does not mean: ...

(10) (A) ***The purchase of advertising space which clearly identifies the purchaser, in a program for a fund-raising affair sponsored by the candidate committee of a candidate for an office of a municipality,*** provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single such candidate or the candidate's committee with respect to any single election campaign if the purchaser is a business entity or fifty dollars for purchases by any other person; ...
[Emphasis added.]

6. General Statutes § 9-613, provides 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.

7. General Statutes § 9-622, provides 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;
[Emphasis added.]

8. The Commission has had previous opportunity to consider the issue of the prohibited use of the ad book exception by a political slate committee, and the application of the ad book exception by the Commission. *See Complaint of John J. Ahern III*, Windsor Locks, File No. 2007-378. Further, the Commission has had previous opportunity to consider the issue of impermissible business entity contributions, where the ad book exception did not apply. *See Complaint of William Holden*, Trumbull, File No. 2007-378 (forfeiture in the amount of impermissible business entity contributions where business entities exceeded annual amount of ad book purchases and therefore could not avail itself to the exception) and *Complaint of John Lappie*, North Branford, File No. 2007-371 (forfeiture in the amount of impermissible business entity contributions where business entity contributions were unrelated to an ad book purchase for a fundraiser and therefore were impermissible).
9. General Statutes § 9-601a (b) (10) (A) which excepts advertisement sales/purchases in a program booklet from the definition of a contribution, applies to fund-raising affairs sponsored by the candidate committee of a candidate for an office of a municipality or a town committee. Without the application of the exception, such business entity purchases constitute prohibited business entity contributions, pursuant to General Statutes § 9-613. General Statutes § 9-622 (10) makes it an illegal practice to receive a contribution that is otherwise prohibited by any provision of Chapter 155 of the General Statutes. Therefore in *Ahern* the Commission concluded that a municipal slate committee could not "...avail itself of the [ad purchases in a program booklet] exception," and therefore "[t]he program book advertising purchase[d] by the business entities in connection with the kickoff fundraiser constitute[d] prohibited contributions, the receipt of which constituted a violation of

General Statutes § 9-622(10) by [Respondent].” *Complaint of John J. Ahern III, Windsor Locks, File No. 2007-378.*

10. Upon investigation, the Commission finds that Respondent received legal advice from two private attorneys instructing her that it was permissible for *VoP 2011 Committee* to sell advertising for a program booklet for a fundraising affair, and thus taking advantage of the exception to the definition of “contribution” in § 9-601a (b) (10) (A). The Commission further finds that, based on the aforementioned receipt of legal advice, mitigating circumstances exist regarding Respondent’s receiving proceeds from advertising sales for a program booklet on behalf of *VoP 2011 Committee* (a political slate committee).
11. The Commission concludes, with regards to Allegation One, that Respondent violated General Statutes §§ 9-601a (b) (10), 9-613 and 9-622, which prohibit the use of sales of advertising in a program booklet to raise money from business entities by political slate committees of municipal candidates, and the receipt of business entity contributions by such committees. Further, the Commission concludes that good faith reliance on legal advice mitigates Respondent’s failure to comply with the aforementioned statutes, and therefore the Commission will not seek civil penalties under these specific limited circumstances.
12. Complainant alleged in Allegation Two that Respondent failed to disclose the correct creditor for a September 30, 2011 expense incurred but not paid on the *VoP 2011 Committee’s* SEEC Form 20 filed October 11, 2011 as required by General Statutes § 9-608. Specifically, the aforementioned expense was reported as incurred but not paid, was in the amount of \$4,784.00 and credited to Joseph Tarzia by *VoP 2011 Committee*. Pursuant to § 9-608 an itemized accounting of an expense incurred but not paid shall include secondary payees “provided ... the expense [was] incurred by use of a credit card.”
13. Upon investigation, the Commission determined that Mr. Tarzia paid a business entity by *personal check* in the amount of \$4,784.00. Therefore, the Commission concludes that because the expense incurred but not paid was not paid by credit card § 9-608 did not require a listing of secondary payees as alleged in Allegation Two. The Commission therefore dismisses Allegation Two as it is not supported by the evidence.
14. Complainant alleged in Allegation Three that *VoP 2011 Committee* failed to disclose an expenditure for a citywide mailer as required by General Statutes § 9-608. Upon investigation, the Commission determined that *VoP 2011 Committee* paid \$1,933.95, by committee check, to Alpha Graphics for a mailing to 11,222 names in Stamford, which constituted and reflected expenses for the aforementioned citywide mailer. Furthermore, the Commission finds that the \$1,933.95 was reported by *VoP 2011 Committee* on its SEEC Form 20 for the period covering October 1, 2011 through October 25, 2011. The

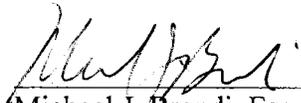
Commission therefore dismisses Allegation Three because it is not supported by the evidence.

15. 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 § 9-7b-56 of the Regulations of Connecticut State Agencies.
16. 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.
17. Respondent waives:
 - a) Any further procedural steps;
 - b) The requirement that the Commission's decision contains a statement of findings of fact and conclusions of law, separately stated;
 - c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
18. Upon the Respondent's compliance with the Order hereinafter stated the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with the requirements of General Statutes §§ 9-601b (10), 9-613, 9-622.

Dated: For the State of Connecticut,
BY:



Michael J. Brandi, Esq.
Executive Director and General Counsel,
and Authorized Representative
of the State Elections
Enforcement Commission
20 Trinity Street
Hartford, Connecticut

Dated: 2/11/13 The Respondent,
BY:



Kathleen Murphy
68 Saddle Rock Road
Stamford, CT 06902

Adopted this ²⁰13th day of February, 2013, at Hartford, Connecticut by vote of the Commission.



Anthony J. Casagno, Chairman
By Order of the Commission