

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re Audit Report for *Brenda 2010*

File No. 2012-010

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Michael E. Hahn, of the City of Fairfield, State of Connecticut, hereinafter referred to as the Respondent, and the undersigned authorized representative of the State Elections Enforcement Commission enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

1. The Commission initiated this investigation into the qualified candidate committee of Brenda Kupchik, candidate for the 132nd General Assembly district in the 2010 election, on January 18, 2012 based on the results of a proposed Final Audit Report issued by the Campaign Audit and Disclosure Unit.
2. The Commission's audit revealed that the candidate committee had filed a termination report on January 10, 2011. The bank statement of March 1, 2011 reflected an account balance of \$459.44 remaining in the committee's account. On July 12, 2011, the bank reported a counter withdrawal of \$459.44, the balance in the account. That withdrawal brought the account balance to zero.
3. The auditors spoke with Respondent, the campaign treasurer for the *Brenda 2010* candidate committee, who said that he had received a post-election payment of \$450 for his work as campaign treasurer during the campaign cycle. The Respondent assured Commission staff that he would forward the \$9.44 in surplus to the Citizens' Election Fund as required. The Commission has yet to receive that surplus payment.
4. For the 2010 election cycle, General Statutes § 9-608 (e) (1) required the campaign treasurer of a candidate committee to distribute all surplus and terminate the committee by January 31, 2011. *See* General Statutes § 9-608 (e) (1) (2011).
5. While the General Assembly in 2011 amended these deadlines to allow candidate committees selected by the Commission for post-election audits to postpone termination until June 30 of year following the November election, those later deadlines applied only to

elections that occur after January 1, 2012, the effective date of the legislation. *See* General Statutes § 9-608 (e) (1) (Rev. 2012).

6. Respondent properly terminated the committee before January 31, 2011 but should have transmitted any surplus in the committee's bank account to the CEF by that deadline as well, as required by § 9-608 (e) (1).
7. Following the initiation of this enforcement matter, investigators contacted the candidate, who confirmed that she and Respondent had agreed that he would be paid \$450 for services rendered as treasurer.
8. The candidate committee and Respondent did not execute a written, pre-performance service agreement, laying out the scope, terms, and compensation arrangement of the employment relationship.
9. Regulations, Conn. State Agencies, § 9-607-1 (a) (1) states, in relevant part:

[T]he campaign treasurer shall maintain internal records, including but not limited to:

1. a written agreement, signed before any work or services for which payment in excess of \$100 is sought is performed, which sets forth (i) the nature and duration of the fee arrangement and (ii) a description of the scope of the work to be performed or services to be rendered; . . .

10. Here, the candidate committee did not execute an agreement with Respondent laying out the scope, terms, and compensation arrangement before performance of the contract began, as required by regulations governing documentation of expenditures under General Statutes § 9-607. Respondent's compensation agreement was not reduced to writing before performance but rather appeared to be an oral agreement between the candidate and campaign treasurer after performance had been substantially completed.
11. In 2011, the Commission addressed a similar issue with a different campaign treasurer who sought permission to use a portion of the surplus remaining in the candidate committee's bank account after the election to pay himself \$1,000 for services rendered. After staff advised the treasurer that he would not be able to make that payment, the campaign

treasurer sought a declaratory ruling from the Commission authorizing him to make this post-election payment from the candidate committee funds. *See* Declaratory Ruling 2011-02 “Propriety of Expenditure out of Surplus Funds Following Election for Treasurer Services in Absence of a Written Agreement” (State Elections Enforcement Comm’n, April 16, 2011).

12. In its declaratory ruling, the Commission addressed the permissibility of a campaign treasurer receiving a payment from the candidate committee after the election when no prior, written agreement existed. There the Commission concluded that absent that written agreement, such a payment from surplus funds based on an oral agreement would be impermissible. *See* Declaratory Ruling 2011-02.
13. In the wake of this declaratory ruling, the General Assembly in its 2011 session amended the statute governing the treatment of surplus funds, especially as it relates to payments to treasurers from surplus funds. This statutory change addresses, in part, the issue raised in Declaratory Ruling 2011-02, in that it specifically allows a treasurer of a qualified candidate committee to make as much as a \$1,000 payment to the treasurer for services rendered from surplus funds that previously would have been returned to the Citizens’ Election Fund. This statutory change applies, however, only to elections and primaries held on or after January 1, 2012, the effective date of the legislation. Because the underlying election here occurred in November 2010, the statutory change allowing such payments in 2012 elections would not apply to this payment.
14. Respondent admits all jurisdictional facts and agree 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.
15. 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.

16. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them concerning this matter or the findings that appear in the Final Audit Report for the *Brenda 2010* candidate committee.

17. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if one becomes necessary.

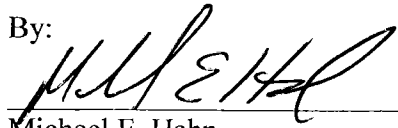
ORDER

IT IS HEREBY ORDERED THAT Respondent return to the Citizens' Election Fund \$459.44, the entire surplus that remained in the candidate committee's bank account at the time of termination of the committee on January 10, 2011. The Respondent further agrees henceforth to comply strictly with the requirements of General Statutes § 9-608 (e).

The Respondent

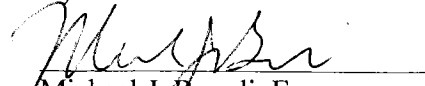
For the State of Connecticut

By:



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By:



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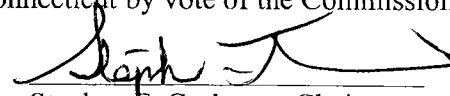
Dated:

12-17-2012

Dated:

12/17/12

Adopted this 19th day of Dec, 2012 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

DEC 17 2012

ENFORCEMENT COMMISSION

*agreement rec'd
(cash) rec'd
↳ unaccounted*