

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Evelyn Cruz

File No. 2012-029

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that prior to the March 2012 primary for the Democratic Town Committee in the City of Hartford, Respondent Clorinda Soldevilla impermissibly took possession of an absentee ballot in violation of General Statutes § 9-140b (d).

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. On March 6, 2012 a primary was held in the City of Hartford to choose members of the Democratic Town Committee.
2. Complainant here alleges that on February 4, 2012 Respondent Soldevilla visited her home, assisted her, her husband Robert Cruz and her daughter-in-law Zilkie Sierra in filling out applications for an absentee ballot and returned said applications to the Hartford City Clerk on their behalf.
3. Complainant further alleges that the Respondent visited her home on or about February 11, 2012 in possession of three absentee ballots: one for her, Mr. Cruz, and her Ms. Sierra.
4. Complainant further alleges that on or about February 13, 2012, Respondent Soldevilla returned to the Complainant's home and collected an envelope containing her executed absentee ballot and told the Complainant that she would return the ballot on her behalf.
5. General Statutes § 9-140 reads, in pertinent part:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. *Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting.* The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. The municipal clerk shall not distribute with an absentee

ballot application any material which promotes the success or defeat of any candidate or referendum question. The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application. The application shall be signed by the applicant under the penalties of false statement in absentee balloting on (1) the form prescribed by the Secretary of the State pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word "by" and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application . . .

(f) Absentee voting sets shall be issued beginning on the thirty-first day before an election and the twenty-first day before a primary or, if such day is a Saturday, Sunday or legal holiday, beginning on the next preceding business day.

(g) On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, within twenty-four hours, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the clerk shall comply with the request. Any absentee voting set to be mailed to an applicant shall be mailed to the bona fide personal mailing address shown on the application. Issuance of absentee voting sets shall also be subject to the provisions of subsection (c) of this section, section 9-150c and section 9-159q concerning persons designated to deliver or return ballots in cases involving unforeseen illness or disability and supervised voting at certain health care institutions. . . .

(Emphasis added.)

6. General Statutes § 9-140b reads, in pertinent part:

(a) An absentee ballot shall be cast at a primary, election or referendum only if: (1) It is mailed by (A) the ballot applicant, (B) a designee of a person who applies for an absentee ballot because of illness or physical disability, or (C) a member of the immediate family of an applicant who is a student, so that it is received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of the polls; (2) it is returned by the applicant in person to the clerk by the day before a regular election, special election or primary or prior to the opening of the polls on the day of a referendum; (3) it is returned by a designee of an ill or physically disabled ballot applicant, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (4) it is returned by a member of the immediate family of the absentee voter, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (5) in the case of a presidential or overseas ballot, it is mailed or otherwise returned pursuant to the provisions of section 9-158g; or (6) it is returned with the proper identification as required by the Help America Vote Act, P.L. 107-252, as amended from time to time, if applicable, inserted in the outer envelope so such identification can be viewed without opening the inner envelope. A person returning an absentee ballot to the municipal clerk pursuant to subdivision (3) or (4) of this subsection shall present identification and, on the outer envelope of the absentee ballot, sign his name in the presence of the municipal clerk, and indicate his address, his relationship to the voter or his position, and the date and time of such return. As used in this section, "immediate family" means a dependent relative who resides in the individual's household or any spouse, child or parent of the individual.

(b) As used in this section and section 9-150c, "designee" means (1) a person who is caring for the applicant because of the applicant's illness or physical disability, including but not limited to, a licensed physician or a registered or practical nurse, (2) a member of the applicant's family, who is designated by an absentee ballot applicant and who consents to such designation, or (3) if no such person consents or is available, then a police officer, registrar of voters, deputy registrar of voters or assistant registrar of voters in the municipality in which the applicant resides.

(c) For purposes of this section "mailed" means sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State.

(d) No person shall have in his possession any official absentee ballot or ballot envelope for use at any primary, election or referendum except the applicant to whom it was issued, the Secretary of the State or his or her authorized agents, any official printer of absentee ballot forms and his designated carriers, the United States Postal Service, any other carrier, courier or messenger service recognized and approved by the Secretary of the State, any person authorized by a municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk, any authorized primary, election or referendum official or any other person authorized by any provision of the general statutes to possess a ballot or ballot envelope. (Emphasis added.)

7. As an initial matter, the Commission finds that the evidence shows, and the Complainant's allegations do not dispute, that the Respondent signed as an assister and printed her name, residence address and telephone number on the absentee ballot applications of both the Complainant, Mr. Cruz and Ms. Sierra, took possession of the applications and returned them to the Hartford City Clerk.
8. Turning to the thrust of the Complainant's allegations, she alleges that the Respondent delivered three absentee ballots to her home on or about February 11, 2012 and picked up the Complainant's executed ballot on or about February 13, 2012.
9. The Commission finds that the evidence is insufficient to show that the Respondent could have permissibly delivered unmarked ballots to the Complainant. The applications were submitted by mail 3-4 weeks prior to the March 6, 2012 primary and as such could only have been delivered upon the applicants via mail at their bona fide address.
10. The Commission further finds that no exception under General Statutes § 9-140b applied to the Respondent such that she could have permissibly possessed the Complainant's marked ballot as alleged.
11. However, the Commission also finds that the evidence is insufficient to support the Complainant's allegation that the Respondent delivered absentee ballots to her home on or about February 11, 2012. The evidence obtained from the Hartford City Clerk is sufficient to show that the absentee ballots were not delivered upon the Hartford City Clerk by the ballot printing company and made available to applicants until at least February 15, 2012,

four days after the date the Complainant claims the Respondent delivered unmarked ballots to her.

12. Moreover, the records of the City Clerk, including but not limited to the official logs of all mailed absentee ballot sets, establish that the absentee ballot sets for the Complainant, Mr. Cruz and Ms. Sierra were mailed no earlier than the day they became available on February 15, 2012.
13. Further, the evidence from the Office of the City Clerk establishes with sufficiency that the executed ballots for the Complainant, Mr. Cruz and Ms. Sierra were received *by mail* on February 22, 2012.
14. In consideration of the aforesaid, the evidence is insufficient to establish that the Respondent possessed any marked or unmarked ballots of the Complainant, Mr. Cruz or Ms. Sierra. As such, the allegations against this Respondent should be dismissed.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter is dismissed.

Adopted this 27th day of June, 2012 at Hartford, Connecticut.


Stephen F. Cashman, Chairperson