

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re Audit Report for *Friends of Gerry Garcia*

File No. 2012-072

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Gerry Garcia, of the City of New Haven, 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 complaint after its Audit & Disclosure Unit conducted an audit of the *Friends of Gerry Garcia* candidate committee, which received a grant in 2010 from the Citizens' Election Fund to run in the Democratic Party primary for the office of secretary of the state.
2. The candidate committee raised a total of \$83,654 in qualifying contributions and received a grant from the Citizens' Election Fund for \$374,950. The committee returned a surplus of \$9.41 to the CEF upon the its termination in April 2011.
3. The Commission's audit identified expenditures of the candidate committee that were made for clothes for the candidate. According to the audit, the committee made payments totaling \$457.72 for clothing and tailoring. The Commission's investigation revealed additional payments for clothing and other personal items, bringing the total amount paid by the candidate committee for these prohibited items to \$953.58.
4. Respondent stated during the investigation of this complaint that he believed the purchase of the clothing was directly related to his candidacy and that the candidate committee had to pay for the clothes. The belief that these expenditures were permissible was stated in a letter from the campaign manager for the Garcia campaign:

We believed that clothing purchased for exclusive use by the candidate, used exclusively for campaign purposes and disposed of charitably at the campaign conclusion met the letter and spirit of the CEP rules as we understood them. Given the rigor of campaigning, we thought it was reasonable that so long as the candidate never made personal use of the clothing, such a purchase would meet the CEP rules.

Letter from Jason Bartlett, *Friends of Gerry Garcia* campaign manager, to State Elections Enforcement Comm'n (Aug. 6, 2012).

5. General Statutes § 9-607 (g) (4) prohibits the use of candidate committee funds to pay for personal expenditures of the candidate or the candidate's family. Specifically, the statute states:
 - (4) As used in this subdivision, expenditures for "personal use" include expenditures to defray normal living expenses for the candidate, the immediate family of the candidate or any other individual and expenditures for the personal benefit of the candidate or any other individual having no direct connection with, or effect upon, the campaign of the candidate or the lawful purposes of the committee, as defined in subdivision (2) of this section. No goods, services, funds and contributions received by any committee under this chapter shall be used or be made available for the personal use of any candidate or any other individual. No candidate, committee, or any other individual shall use such goods, services, funds or contributions for any purpose other than campaign purposes permitted by this chapter.

General Statutes § 9-607 (g) (4).

6. Regulations governing the Citizens' Election Program also restrict expenditures from the candidate committee to defray personal expenses of the candidate.
7. General Statutes § 9-706 requires all candidates who seek a grant from the Citizens' Election Fund to certify that they will expend all grant monies received from the fund in accordance with General Statutes § 9-607 as well as regulations governing qualified candidate committees. Those regulations governing the program state that a candidate committee that has received a grant from the CEF may not pay for personal expenses of the candidate or the candidate's family. The regulations are very clear on the subject, prohibiting participating candidate committees from making payments for:
 1. Personal use, as described in Section 9-607(g)(4) of the Connecticut General Statutes;
 2. The participating candidate's personal support or expenses, such as for personal appearance or the candidate's household day-to-day food items, supplies, merchandise, mortgage, rent, utilities, **clothing or attire, even if such personal**

items (such as the participating candidate's residence, or business suits) are used for campaign related purposes;

Regulations, Connecticut State Agencies, § 9-706 (b) (1) and (2) (Emphasis added).

8. These prohibitions on expenditures for the candidate's personal items, including clothing, have existed for many years, in both the public financing and traditional campaign financing worlds. In fact, in 2002, the Commission sought enforcement against a candidate who used committee funds to purchase clothing. *See* In the Matter of a Complaint by Adam Gutcheon, Windsor, File No. 2002-182 (State Elections Enforcement Comm., Nov. 13, 2002) (concluding that state senate candidate had spent \$1,844.37 on clothing from his candidate committee). The Commission required the candidate to disgorge the amount of money his committee had spent on clothing to settle the matter. *Id.*
9. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies:

In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

- (1) the gravity of the act or omission;
- (2) the amount necessary to insure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

Regulations, Connecticut State Agencies, § 9-7b-48.

10. On October 29, 2009, the candidate and campaign treasurer of *Friends of Gerry Garcia* agreed to abide by all restrictions included in the statutes and regulations governing the Citizens' Election Program when they signed an affidavit that made the committee a "participating committee" under Connecticut's campaign finance regime. *See* Affidavit of Intent to Abide by Expenditure Limits and nm, Other Citizens' Election Program Requirements, SEEC Form CEP 10 (*Friends of Gerry Garcia*, Oct, 29, 2009).
11. Respondent agrees that the actions were in violation of the statutes and regulations; however, he maintains that his actions were an inadvertent, honest mistake and that he derived no personal benefit from the purchase of the clothing. Respondent states that the clothing in question was donated to charity immediately after the campaign.

12. By making payments for the items for the “personal use” of the candidate, the committee violated by General Statutes § 9-607 (g) (4) as well as General Statutes § 9-706 and the regulations adopted by the Commission to govern participating candidates’ expenditures.
13. General Statutes § 9-7b (a) (2) (D) authorizes the Commission to impose a penalty not to exceed “two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater, against any person the commission finds to be in violation of any provision of chapter 155 or 157.” General Statutes § 9-7b (a) (2) (D).
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 him concerning this matter.
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 HERERY ORDERED THAT Respondent pay as a civil penalty the amount of \$ 1,900, which is an amount equal to twice the amount of improper expenditures for clothing and other personal items for the candidate. Such payment reflects the violation of General Statutes §§ 9-607 and 9-706 and Regulations, Connecticut State Agencies, § 9-706-2 (b)(1) and (2). Respondent further agrees henceforth to comply strictly with the requirements of General Statutes §§ 9-607 and 9-706.

The Respondent

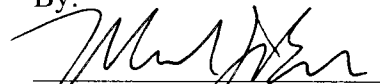
For the State of Connecticut

By:



Gerry Garcia
143 Bradley Street
New Haven, CT 06511

By:

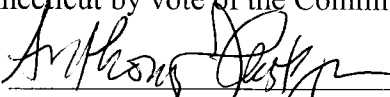


Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT 06106

Dated: 5/17/2013

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Adopted this 19 day of June, 2013 at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman
By Order of the Commission