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**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Jennifer Buchanan, et. al, Bridgeport

File No. 2013-130A

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Alma Maya, of the City of Bridgeport, County of Fairfield, State of Connecticut 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:

ALLEGATIONS

1. The Complainant, along with 7 other co-Complainants allege that two absentee ballots were impermissibly sent by Respondent Town Clerk Alma Maya for the September 10, 2013 Democratic primary in the City of Bridgeport to Respondent Ernesta Garcia and both were marked and returned by Ms. Garcia.
2. More specifically, the Complainants allege that an individual named Ernesta Garcia of 216 William Street applied for an absentee ballot on two different occasions, was issued a ballot on each occasion, and returned it marked on each occasion. The Complainants do not make a specific allegation of a violation of law, but rather request that the ballots be disqualified.¹

LAW

3. The procedure for addressing instances in which an absentee ballot voter requests an additional ballot is enumerated in General Statutes § 9-153b, which reads:
 - (a) If any absentee ballot applicant applies for an additional absentee ballot, he shall note on his application the reason for his applying for an additional absentee ballot and he shall return the absentee voting set formerly issued to him before another set is issued to him, provided, *if*

¹ The Commission notes that it does not have the authority to disqualify ballots.

he is unable to return the set formerly issued to him, his application for an additional ballot shall be accompanied by a statement signed under the penalties of false statement in absentee balloting in which he shall set forth the reason for his inability to return the set formerly issued to him. If he fails to file such a statement, no additional set shall be issued to him.

(b) Except as provided in subsection (d) of this section for members of the armed forces, the municipal clerk shall mark the serially-numbered outer envelope “rejected” and note the reasons therefor on all absentee ballots and envelopes so returned to him and shall seal such unopened ballots in a package and retain them in a safe place until delivered in accordance with section 9-140c. The municipal clerk shall keep a list of the names of each absentee ballot applicant who has applied for more than one absentee ballot, as provided in section 9-140, together with the serial number appearing on the outer envelope of each absentee voting set issued to each such applicant including the latest one issued.

(c) When an absentee ballot applicant has applied for more than one absentee ballot, only the latest absentee ballot issued to him by the municipal clerk as determined by the serial number appearing on the outer envelope may be counted and all absentee ballots and envelopes formerly issued to that applicant shall be marked rejected as provided in subsection (b) of this section and not counted.

(d) Subsections (a), (b) and (c) of this section shall not apply to members of the armed forces, and if more than one absentee ballot is received from any elector who is a member of the armed forces, the ballot of such elector bearing the latest postmark shall be counted if no absentee ballot of such elector has already been counted, provided that the municipal clerk shall mark all serially-numbered outer envelopes bearing earlier postmarks “rejected” and note the reasons for rejection and shall deliver such ballots in accordance with section 9-140c. . . (Emphasis added.)

INVESTIGATORY FINDINGS

4. A background investigation of Ms. Garcia revealed that she is a resident at 216 William St. and was 102 years old at the time of the events of this case.

5. The investigation revealed that on or about August 6, 2013, the Respondent Town Clerk received Ms. Garcia's first absentee ballot application.
6. The first day on which absentee ballots could be issued was August 20, 2013, at which point the Town Clerk sent Ms. Garcia her first ballot in the mail.
7. On or about August 28, 2013, the Respondent Town Clerk received Ms. Garcia's second absentee ballot application, again in-hand by a second assistor, and sent her a second absentee ballot that day.
8. Both absentee ballots were marked and returned under Ms. Garcia's signature prior to the September 10, 2013 primary.
9. However, the Respondent Town Clerk became aware that Ms. Garcia had already been issued two ballots and only submitted the first absentee ballot to be tabulated. The Respondents submitted evidence that the second absentee ballot remained in its envelope and was not counted in the September 10, 2013 primary.
10. Turning to the question, as an initial matter there was no prohibition against Respondent Garcia requesting a second absentee ballot. As such, the Commission finds that she does not have liability here.
11. However, subsection (a) of § 9-153b required that Ms. Garcia include a statement indicating her reasons for requesting a second ballot in order to receive said ballot. It was not impermissible for Ms. Garcia to fail to present the statement, but the application should have been rejected and a second ballot should not have been sent.
12. Considering the facts in light of the procedures enumerated in General Statutes § 9-153b, the Commission finds that since the second application lacked the required statement under § 9-153b, it should not have been issued. However, the Commission also finds that ultimately the result was the correct one—only the first ballot was counted.
13. The investigation did not reveal exactly why the second ballot was issued, but it appears that this might have occurred as a result of an application of the (correct) advice of the Secretary of the State, combined with the an outdated but commonly used version of the absentee ballot application form that was used by the voter (and issued by the Respondent Town Clerk).

14. The most current absentee ballot form, ED-3A, includes a check box on the form in which the voter may indicate that she is requesting a second ballot, as well as an attestation under the penalty of false statement as to the reason why.
15. The investigation confirmed that it is the regular advice of the Secretary of the State's office that no other statement (in addition to Form ED-3A) is necessary in order for a town clerk to issue an additional ballot.
16. However here, the Respondent Town Clerk appears to still be using Form ED-3, as many still do, which is a prior edition that does not contain fields that are § 9-153b-compliant. Continued use of this form by town clerks is not impermissible and is not uncommon, as each application has a unique serial number and many town clerks printed a substantial number of such applications prior to the existence of the new form. As town clerks are not legally compelled to use the most updated form in this instance, many have chosen to draw down their existing stock before upgrading.
17. However, whatever the reasons for the Town Clerk's continued use of the old form, in order for a second ballot to have been issued, a statement in addition to the form ED-3 should have been included with the second application since the ED-3 lacked the appropriate space to do so.

CONCLUSION

18. Considering the aforesaid, the Commission concludes that in issuing the second ballot, Respondent Alma Maya did not correctly follow the procedure enumerated in General Statutes § 9-153b (a).
19. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining whether a civil penalty will be assessed, and if so, the amount of such civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
 - (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.
20. The Respondent should not have allowed a second ballot to be released to a voter without a sufficient statement as to the voter's reasons for making such a request.

21. However, as discussed above, ultimately the result was the correct one—only the first ballot was counted. The Respondent here did not appear to lose track of the fact that two ballots had been issued, nor did she appear to fail to understand that only the first ballot was to be counted in this instance.

AGREEMENT

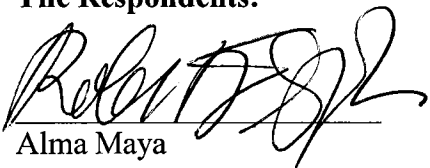
22. Considering the aforementioned aggravating and mitigating circumstances in this matter, the Commission concludes and the parties agree that the appropriate remedy herein is that the Respondent Town Clerk dispose of the outdated ED-3 absentee ballot applications and replace them with the most updated edition, which includes the attestation that is the subject of the Complaint, by the November 2015 general election. Additionally, the Respondent Town Clerk will enter into a consent agreement with the Commission in which she agrees to henceforth strictly comply with § 9-153b in the future
23. The 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 Section 9-7b-56 of the Regulations of Connecticut State Agencies.
24. 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.
25. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.
26. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

IT IS ORDERED THAT that no later than the November 8, 2015 General Election, Respondent Alma Maya shall cease utilizing the form ED-3 absentee ballot application forms and replace them with the most updated edition of the absentee ballot application form approved by the Connecticut Secretary of the State's Office, which form includes the attestation enumerated in General Statutes § 9-153b (a) and that is the subject of this complaint.


IT IS FURTHER ORDERED THAT that Respondent Alma Maya will henceforth strictly comply with the requirements of General Statutes § 9-153b.

The Respondents:



Alma Maya
Bridgeport, CT
By Robert F. Shea, Esq. her attorney
Juris No. 404133


For the State of Connecticut:

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

Dated: 4/24/15

Dated: 4/24/15

Adopted this 19 day of MAY of 20 15 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission

**RECEIVED
STATE ELECTIONS**

APR 24 2015

ENFORCEMENT COMMISSION