

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by John Alseph, Waterbury.

File No. 2014-121

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Respondent Victor Cuevas lacked bona fide residence in the City of Waterbury and impermissibly cast ballots from that address from approximately July 2013 through 2014.

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

Background

1. According to the records of the Waterbury Registrars of Voters, Respondent Victor Cuevas was a registered voter at an address on Gaylord Drive in Waterbury from April 2008 through September 2011, on Keefe Street from September 2011 through April 2013, on Donahue Street from April 2013 to May 2015, back to Keefe Street from May 2015 to February 2016, and finally back to Donahue Street from February 2016 forward.
2. Respondent Cuevas cast ballots from Waterbury during the November 5, 2013 General Election and November 4, 2014 General Election.
3. At the November 2, 2012 General Election, Respondent Cuevas was elected to represent the 75th General Assembly House District and was re-elected at the November 4, 2014 General Election. Respondent Cuevas served in the General Assembly until he resigned in March 2016.

Allegation

4. The Complainant here alleges that Respondent Cuevas lacked bona fide residence in Waterbury from July 2013 through the end of 2014.
5. The basis for the Complainant's allegation is not personal knowledge, but rather mortgage documents for a Federal Housing Administration loan on a property at Jefferson Avenue in Bristol.

6. The Complainant alleges that the mortgage document required that Mr. Cuevas “reside at the address and maintain owner occupancy” in order to obtain the F.H.A. loan and concludes therefore that he abandoned bona fide residence in Waterbury as a result.
7. An elector is eligible to register to vote in a particular town only if such voter is a bona fide resident of such town. General Statutes § 9-12, provides in pertinent part:
 - (a) Each citizen of the United States who has attained the age of eighteen years, and who is a bona fide resident of the town to which the citizen applies for admission as an elector shall, on approval by the registrars of voters or town clerk of the town of residence of such citizen, as prescribed by law, be an elector, except as provided in subsection (b) of this section. For purposes of this section a person shall be deemed to have attained the age of eighteen years on the day of the person’s eighteenth birthday and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person’s dwelling unit is located within the geographic boundaries of such town. No mentally incompetent person shall be admitted as an elector. . . .(Emphasis added.)
8. In addition to the statutory prongs of age, citizenship and geographic location identified above, an individual’s bona fide residence must qualify as the place where that individual maintains a true, fixed, and principal home to which he or she, whenever transiently relocated, has a genuine intent to return. See, e.g., *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-077; *In the Matter of a Complaint by Gary Amato, North Haven*, File No. 2009-158 (2010); *In the Matter of a Complaint by Cicero Booker, Waterbury*, File No. 2007-157. In other words, “bona fide residence” is generally synonymous with domicile. *Id.*; cf. *Hackett v. The City of New Haven*, 103 Conn. 157 (1925). The Commission has concluded, however, that “[t]he traditional rigid notion of ‘domicile’ has . . . given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, and individuals with multiple dwellings).” (Emphasis added.) *In the Matter of a Complaint by James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (Emphasis added.). See also *Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir. 2002) (stating that under certain circumstances the domicile rule for voting residency can give rise to administrative difficulties which has led to a pragmatic application of that rule in New York); *Sims v. Vernon*, Superior Court, Fairfield County, No. 168024 (Dec. 22, 1977) (concluding that an absentee ballot of an individual should be counted as that individual was a bona fide resident of the town in which the ballot was cast.); *Farley v. Louzitis*, Superior Court, New London County, No. 41032 (Oct. 4, 1972) (considering issue of voter residency with respect to college students and stating that “a student, and a nonstudent as well, who satisfies the . . .

residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting interests at the residence he selects exceed his voting interests elsewhere.”) (Emphasis added.)

9. The Commission has previously concluded that “[a]n individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual’s bona fide residence.” *Referral by Manchester Registrars of Voters*, Manchester, File No. 2013-081; (quoting *In the Matter of a Complaint by James Cropsey, Tilton, New Hampshire*, File No. 2008-047). Rather, the individual only has to possess a present intention to remain at that residence. *Id*; see also *Maksym v. Board of Election Com'rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (January 27, 2011), 2011 WL 242421 at *8 (“[O]nce residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. . . .”)

Federal Investigation

10. Concurrent with the initiation of an investigation into the instant matter, the United States Department of Justice opened their own investigation into whether Respondent Cuevas had obtained the aforementioned F.H.A. loan through fraud and/or deceit.
11. As is the regular practice of the Commission, where matters overlap substantially with investigations by the Department of Justice and/or any Connecticut State’s Attorney’s Office, the Commission held its investigation in abeyance pending the conclusion of the investigation of the criminal matter. The U.S.D.O.J. investigation concerned the same F.H.A. loan that is the subject of the instant matter.
12. In June 2016, Respondent Cuevas pleaded guilty to one count of conspiracy to commit bank fraud for conspiring with others to commit bank fraud in connection with his F.H.A. loan application. Specifically, he admitted that he, “with the assistance of others, represented to the mortgage bank that he was using gifted funds to purchase the property when, in fact, the money was not gifted but was instead loaned to CUEVAS for the purpose of purchasing the property.”¹

¹ June 20, 2016 Press Release from the Department of Justice, U.S. Attorney’s Office, District of Connecticut.

Specifically, CUEVAS first represented to the mortgage bank that an individual who he identified as his nephew but, in fact, was a subordinate employee from the City of Waterbury, was providing him with cash to purchase the property as a gift. When the mortgage lender asked for the “nephew’s” bank account statements to prove that he had the money to gift to CUEVAS, CUEVAS withdrew the mortgage application. A few weeks later, CUEVAS had a different Waterbury employee, who CUEVAS identified as his “cousin,” “gift” him the \$7,000. Both individuals signed a HUD statement under oath that the funds were, indeed, a “gift” and that no repayment of the monies was expected. However, as soon as the mortgage closed, CUEVAS re-paid the employee the \$7,000.²

13. While the question of Respondent Cuevas’ residence for purposes of qualifying for the F.H.A. loan was discussed in the Government’s October 17, 2016 Sentencing Memorandum, the Government ultimately did not question Respondent Cuevas’ statement in the F.H.A. loan and/or charge Respondent Cuevas for fraud related to said statement.
14. As is the practice between the agencies, no evidentiary materials were divulged by the D.O.J. to the SEEC beyond those which were disclosed in the documents submitted to the court.

Respondent’s Answer

15. The Respondent here asserted to the SEEC that he always maintained residency in the City of Waterbury during 2013 and 2014, despite the purchase of the Bristol property and his intent to eventually move to that property after conducting certain upgrades.
16. The Respondent asserts that Keefe Street was his primary residence, but that he was forced to move to his sister’s home on Donahue Street on two occasions due to domestic issues with his co-occupant at Keefe Street. Each time he made sure to change his registered address to Donahue Street, despite the fact that both homes were within the same local and state voting districts.
17. The Respondent asserts that both properties were within the General Assembly district that he represented and that both properties were walking distance to his job.
18. The Respondent presented evidence that his driver’s license issued in June 2014 maintained the Donahue Street address and that he paid property taxes on his vehicle in the City of Waterbury. He also presented utility bills at the Keefe Street address for portions of 2015.

² Id.

19. The Respondent does not deny establishing the Bristol address as his federal tax domicile from the time of the July 2013 F.H.A. mortgage application forward, but rather asserts that, he continued to maintain access to and stay at the Keefe St. address and then later his sister's house on Donahue both to be near his job, but also with the explicit intent to continue to remain a bona fide resident of the City of Waterbury and represent the 75th District.
20. The Commission investigation was unable to obtain a statement from the co-occupant at the Keefe Street address, but the Respondent's sister Zaida Cruz confirmed in writing to the Commission that the Respondent did reside with her during the times in question.
21. The Respondent asserts that he finally abandoned his bona fide residence claim to Waterbury and moved full time into the Bristol home during the summer of 2016.³

Analysis/Conclusion

22. The federal investigation notwithstanding, the facts of this matter are similar to two prior matters in which the Complaint was filed alleging lack of bona fide residence based not on personal knowledge, but rather a document for a property that was not the registered bona fide residence of the respondent in the matter.
23. *In re: Referral of Trumbull Republican Registrar of Voters William Holden*, File No. 2015-133 concerned an allegation against a bona fide resident of the Town of Trumbull. The referring official alleged that the occupancy requirements of the mortgage deed for a Stratford property that the respondent purchased, that the borrower make the property his "principal residence" within 60 days after the execution of the security instrument, prove that the Respondent was not a bona fide resident at the Trumbull property at which he was registered to vote and did vote.
24. In *Trumbull*, the Commission held:

It is well established that the mere ownership of properties in other districts and/or jurisdictions does not, alone, establish a lack of bona fide residence in the original district or jurisdiction. Moreover, while evidence of the intensity of the attachment to other address(es) is relevant and could potentially be dispositive, the question of whether a respondent has abandoned the original address is best answered with evidence of the present attachment to such original address.

³ The Respondent was taken off the Waterbury voting rolls effective October 2, 2017. There is no record of any votes cast after the November 4, 2014 General Election.

¶ 13 (Emphasis added.)

25. *In the Matter of a Complaint by Cordelia Thorpe, New Haven* File No. 2016-020 concerned an allegation was largely based on the fact that the respondent's driver's license displayed an address that was different than the address at which she was registered to vote. The complainant in that matter had no other evidence and/or testimony of personal knowledge to support the allegation that the respondent was not a bona fide resident at her registered address.
26. The Commission dismissed the matter, as the respondent in *Thorpe* promptly provided more than enough evidence in the matter to prove her claim to the registered address. However, the Commission made it clear that the allegations themselves were decidedly thin in the first place:

the fact that the Respondent's license contained a different address on the front is not prima facie evidence of a lack of bona fide residence at her registered address.

¶ 17

27. The Commission went further in a footnote to the above, adding:

Indeed, a license containing an address that is different from a voter's registered address is sufficient to prove identity under Title 9. Where registration must be proven, additional documents would be necessary. However, for the majority of voters, including the Respondent here, showing a preprinted form of identification showing either your name and address, name and signature or name and photograph is sufficient under General Statutes § 9-261 to allow a voter to obtain a ballot and vote at a polling place.

¶ 17, Footnote 1

28. Here, as in *Trumbull* and similarly in *Thorpe*, the Complainant's allegation is based on a single piece of documentary evidence which, while sufficient to initiate an inquiry, did not alone establish that the Respondent had abandoned bona residence in Waterbury simply because he had taken a mortgage at another property, regardless of the residence requirements of said mortgage.
29. Indeed, dismissals for allegations concerning dual-property dwellers are longstanding and common. The Commission has long held that ownership and/or occupancy of other

properties is not per se evidence of the abandonment of bona fide residence. See, e.g., *In re: Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-091; *In re: Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-077; *In the Matter of a Complaint by Ralph Arena, Hartford*, File No. 2012-030; *In the Matter of a Complaint by Anne Cushman Schwaikert, et al, Woodbury*, File No. 2011-005; *In the Matter of a Complaint by Thomas Holroyd, Roxbury*, File No. 2009-122.

30. However, even considering the aforesaid, based on the totality of the investigation and extraordinary circumstances of a concurrent federal investigation and conviction on substantially the same facts, it is unnecessary for the Commission to decide here whether the evidence is sufficient to establish that it was more likely than not that the Respondent abandoned bona fide residence at the Waterbury addresses in 2013 and 2014. The Respondent was convicted of a federal felony in association with the FHA mortgage and punished accordingly. The Respondent did not cast ballots after the relevant period and he has since affirmatively abandoned his claim to bona fide residency in Waterbury, as well as his seat in the General Assembly. Accordingly, the Commission will take no further action in this matter.

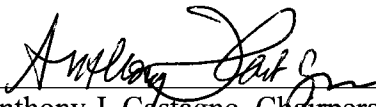
ORDER

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

That no further action is taken.

Adopted this 14th day of March, 2018 at Hartford, Connecticut.

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Anthony J. Castagno, Chairperson
By Order of the Commission