

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Linda Szyrkowicz, Middletown

File No. 2014-158C &
2015-007C

STIPULATED AGREEMENT TO RESOLVE A CONTESTED MATTER

The parties, Steven Serra and the undersigned authorized representative of the State Elections Enforcement Commission (the "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:

ALLEGATIONS

1. The Complainant in this matter alleges that the Respondent voted, via absentee ballot, in the November 4, 2014 election in Middletown when he was not a *bona fide* resident of Middletown.

LAW

2. An elector is eligible to register and 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:

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, . . . For the purposes of this section . . . *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.*

(Emphasis added.)

3. General Statutes § 9-172 further provides that only individuals who are *bona fide* residents of the town in which they are offering to vote will be permitted to vote in the election held in such town. It specifically provides, in relevant part:

At any regular or special town election any person may vote who is registered as an elector on the last-completed registry list of the town in which he offers to vote, and he shall vote in the district in which he is so registered, . . . *Each person so registered shall be permitted to vote if*

he is a bona fide resident of the town and political subdivision holding the election”

(Emphasis added.)

4. Pursuant to General Statutes § 9-7b (a) (3) (E), the Commission is empowered:

To issue an order following the commission’s determination of the right of an individual to be or remain an elector when such determination is made (i) pursuant to an appeal taken to the commission from a decision of the registrars of voters or board of admission of electors under section 9-311, or (ii) following the commission’s investigation pursuant to subdivision (1) of this subsection;

5. The Commission is further empowered to levy a civil penalty against anyone who votes in any election when not qualified to do so. General Statutes § 9-7b (a), provides in pertinent part:

The State Elections Enforcement Commission shall have the following duties and powers: (2) To levy a civil penalty not to exceed. . . (C) two thousand dollars per offense against any person the commission finds to have (i) improperly voted in any election, primary or referendum, and (ii) not been legally qualified to vote in such election, primary or referendum[.]

FACTUAL BACKGROUND

6. Respondent was born on February 21, 1972.
7. Respondent is the adult child of State Representative Joseph Serra, Sr.
8. Joseph Serra, Sr. maintains a residence at 1510 Randolph Road in Middletown, CT (hereinafter the “Randolph Road House”).
9. The Randolph Road House was the childhood home of the Respondent.
10. As of the date of the Complaint, Respondent did not own real estate, but did rent two apartments, one in South Port, CT and the other in New York, NY.
11. Respondent has been employed in New York City since September of 2007.
12. Respondent lists addresses other than the Randolph Road address for all taxation purposes.

13. Respondent is not listed as having any ownership interest in the Randolph Road House in any Middletown town records.
14. Joseph Serra, Sr. was a candidate for the Connecticut General Assembly and on the ballot in Middletown on November 4, 2014.
15. Respondent claims to have returned to the Randolph Road House four to six times a month since 2007.
16. Respondent voted by absentee ballot in the November 4, 2014 general election, in the Town of Middletown. The Complainant made an inquiry concerning Respondent's right to cast an absentee ballot prior to the election. An opinion from the Secretary of the State's Office was sought and received, and the Registrars led Respondent to believe that he was entitled to vote in that election. Respondent would have withdrawn his ballot but for the Secretary's opinion.

DISCUSSION

17. According to the Commission, an individual's *bona fide* residence is the place where that individual maintains a true, fixed, and principal home to which he or she, whenever transiently located, has a genuine intent to return. *See, e.g., Complaint of Cicero Booker, Waterbury*, File No. 2007-157. In other words, "bona fide residence" is generally synonymous with domicile. *Id.*; *cf. Hackett v. 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)." *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047. *See also, Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir. 2002) (stating that under certain circumstances domicile rule for voting residency can create administrative difficulties); *Sims v. Vernon*, 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.")
18. The Commission has further held that, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their *bona fide* residence for the purposes of election

law so long as they possess the requisite intent. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047. See also *Wit*, 306 F.3d at 1262 (quoting *People v. O'Hara*, 96 N.Y.2d 378, 385 (2001)).

19. Moreover, if an individual has established residency at a location, “only the Respondent’s abandonment of the residence . . . will extinguish [his or] her right as an elector in that town.” *Complaint of Carole Dmytryshak, Salisbury*, File No. 2012-197. See also, *Gold v. Gold*, 100 Conn. 607 (Conn. 1924) (holding that for personal jurisdiction purposes “the essentials upon which the conclusion of a change of domicile must rest are an intention to abandon the old domicile and to acquire a new one in another place where a residence has been established”) (citing *Roxbury v. Bridgewater*, 85 Conn. 196; *Hoskins v. Matthews*, 57 Eng. Ch. 12); *Maksym v. Board of Education Com’rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (Jan. 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. . . .”).
20. Respondent has established that the Randolph Road House was his childhood home. Accordingly, the Commission must determine if Respondent has abandoned that location as his residence.
21. First, the Randolph Road House is currently owned by the parents of the Respondent. There is no evidence that he has any current legal title to the residence.
22. Second, Respondent maintains full time residences in New York and Connecticut and lists those addresses for taxation purposes. While maintaining a separate residence, by itself, is insufficient to prove abandonment of residency once established, it is relevant to the inquiry. See *Complaint by Joshua P. Erlanger, New Haven*, File No. 2013-116; *Complaint of Carole Dmytryshak, Salisbury*, File No. 2012-197; *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-091. In this case, Respondent’s connections to the Randolph Road House is that of an adult child visiting a parent, not a resident of the home. Over the past several years, the Respondent has not used the Randolph Road House as a primary home, but rather used it as a place to visit his family that owns that home. Moreover, Respondent is employed, full time, in a job that is located in another location, with no fixed end date. While he has expressed affinity for the Randolph Road House, he has made no showing, and taken no affirmative action to demonstrate that he actually lives or intends to live his day-to-day life at that location.
23. Moreover, Respondent’s age and length of time away from the home is relevant to this inquiry. Respondent was 42 years old on November 4, 2014. He had been living at another

location for at least seven years. This extended indefinite absence demonstrates an abandonment of the Randolph Road House for voting purposes.

24. Respondent's good faith understanding, as cited by the Secretary of the State and the Commission, was, at all times, that despite having a primary residence elsewhere that he could vote in an election from his childhood home to which he had a genuine intent to return despite the length of absence. These past decisions were relied upon by the Respondent to remain on the voter registry list.

25. The Commission does take note of its prior decision *In Complaint of Gary Amato, North Haven*, File No. 2009-158. The Commission recognizes that many, but not all, of the circumstances in that case closely track those in the instant matter and the Commission found that the parent's home could serve as the adult child's *bona fide* residence for voting purposes. With regard to that case, the Commission notes that *bona fide* residence analysis is highly fact specific and further notes that should the facts in *Amato* were to come before the Commission again, the Commission may well reach a different result.

26. Accordingly, the Commission finds that the Respondent abandoned the Randolph Road House prior to the November 4, 2014 election, and thus was not a *bona fide* resident of Middletown on that date.

27. The Commission further finds that the Respondent voted in an election, when not authorized to do so, in violation of General Statutes § 9-7b (a).

28. The Commission further finds that, in light of the Commission's past decision *In Complaint of Gary Amato, North Haven*, File No. 2009-158, and others, the Respondent while mistaken, was acting under a good faith belief that his actions were in compliance with the law.

29. Respondent acted in good faith, at all times, as described in paragraph 24. Respondent disagrees with the Commission's finding in paragraph 26 hereof. Respondent is entering into this Agreement solely to avoid the considerable time and expense in litigating this matter further. Respondent maintains that the court decisions cited by the Secretary of the State in its opinion to the Registrars of Voters and those cited by the Commission in its prior cases, as well as the administrative cases decided by the Commission support the Respondent's position in this matter that no violation occurred. However, in order to avoid any further question and to finally resolve this contested matter, Respondent has voluntarily removed himself from the Middletown registry list, and agrees not to reregister in Middletown unless and until he reestablishes residency in Middletown.

TERMS OF GENERAL APPLICATION

~~SJR~~ 30.29. The Respondent admits to all jurisdictional facts and agrees that this Agreement shall have the same force and effect as a final decision entered into after a full hearing and shall become final when adopted by the Commission.

~~SJR~~ 31.30. 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 to contest the validity of this Agreement.

~~SJR~~ 32.31. In recognition of the Respondent's good faith in attempting to comply with the law and his voluntary action to remove himself from the registry list, the Commission shall not take any further action nor initiate any further proceedings against him regarding this matter.

~~SJR~~ 32.32. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

ORDER

It is hereby ordered that the Respondent shall henceforth strictly adhere to the requirements of General Statutes § 9-12, 9-172, and 9-7b (a).

For the Respondent:

By: Steven J. Serra
Steven Serra
203 Grand Street,
Apt. 21
New York, NY

For the State of Connecticut:

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

Dated: 3/31/2017

Dated: _____

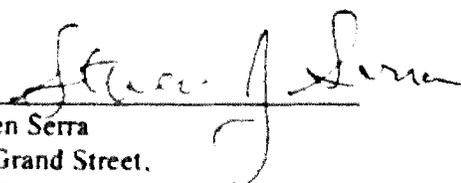
Adopted this ____ day of _____, 2017 at Hartford, Connecticut by vote of the Commission.

Anthony J. Castagno, Chairman
By Order of the Commission

ORDER

It is hereby ordered that the Respondent shall henceforth strictly adhere to the requirements of General Statutes § 9-12, 9-172, and 9-7b (a).

For the Respondent:

By: 
Steven Serra
203 Grand Street,
Apt. 21
New York, NY

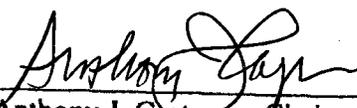
For the State of Connecticut:

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

Dated 4/5/17 2017

Dated: 4/5/17

Adopted this 19 day of April, 2017 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission

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ENFORCEMENT COMMISSION