

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Attorney Brendan M. Fox,
On Behalf of Joseph DaSilva, Jr. (DaSilva Realty), Danbury

File No. 2015-179

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Joseph DaSilva, Jr. of the City of Danbury, County of Fairfield, State of Connecticut (hereinafter "Respondent") 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:

1. Complaint was self-reported by Attorney Brendan M. Fox, Jr. on behalf of his client Joseph DaSilva, Jr. (hereinafter "Respondent") the owner of "The Palace Theater Danbury" and "DaSilva Realty" a commercial real estate company in the City of Danbury.
2. Specifically, Attorney Fox indicated that:
Respondent is considered a "principal," as that term is defined in C.G.S. §9-612(f)(1)(F), of these two affiliated business entities. The purpose of my correspondence is to report on behalf of Respondent and his companies an unintentional infringement of the State's campaign finance laws as applied to prospective State contractors and the principals of prospective State contractors. These unintended oversights occurred after Respondent became a "prospective State contractor" in November 2013 upon submitting a response to an Invitation to Bid distributed by the State Department of Administrative Services ("DAS") for the lease of commercial real property. These errors were detected by Respondent and DAS in the course of completing the applicable Gift and Campaign Contribution Certification form after he was identified as the preferred bidder.
3. By way of background, Respondent has no prior history with the Commission. Further, DaSilva Realty was not on the "Prohibited State Contractors and Prospective State Contractors Lists" maintained and published by the Commission.
4. Respondent is the sole owner of DaSilva Realty in Danbury, Connecticut, and owns commercial property in Danbury and leases such properties to for-profit, not-for-profit and municipal entities. Further, Respondent is the sole owner of the Palace Theater in Danbury.

5. Respondent reported making the following contributions that were confirmed upon independent analysis in the course of this investigation:

Team Boughton (Gubernatorial Candidate Committee) \$100.00 03/25/14
Danbury Democratic Town Committee \$250.00 05/01/14

6. Additionally, Respondent reported making the following contributions from DaSilva Realty and the Palace Theater that were confirmed upon independent analysis in the course of this investigation:

DaSilva Realty to Danbury Republican Town Committee \$250.00 09/23/14
Palace Theatre to Danbury Republican Town Committee \$250.00 09/23/14

7. General Statutes § 9-612 provides in pertinent part:

...
(F) "***Principal of a state contractor*** or prospective state contractor" ***means*** (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, ***(ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president,***

...
(2)(A) No state contractor, prospective state contractor, principal of a state contractor or ***principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;***

...

(C) If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines that mitigating circumstances exist concerning such violation. ...

[Emphasis added.]

8. The Commission finds that in July 2010, Respondent entered into a commercial lease agreement with the Northwest Regional Investment Board, Inc. ("NRWIB") an entity registered with the Connecticut Secretary of State's office as a non-stock corporation. Pursuant to this lease, Respondent leased to the NRWIB 7,000 square feet of commercial space in Danbury known as the "Hull Building" commencing August 1, 2010. Further, the Commission finds that of the NRWIB allowed Naugatuck Valley Community College ("NVCC") to utilize a portion of the available square feet of the space for classroom and administrative space.
9. The Commission further finds that NVCC was *not* a party to the Hull Building lease agreement, and all payments under the lease were made by NRWIB. The Hull Building lease also contained separate options to extend, each option respectively pertaining to the space utilized by the NRWIB and the space occupied by NVCC. Respondent was also *not* an original party to the contract or agreement whereby the NRWIB let a portion of their space at the Hull Building to NVCC.
10. The Commission finds that at some time after the execution of the July 2010 lease and Respondent's 2014 response to the DAS RFP detailed below, NVCC began making rental payments directly to Respondent for the continued use of the space that it originally let from NRWIB. The NVCC thus became a month to month tenant of Respondent causing the latter to assume the holdover tenancy of the NVCC (an institution within the State's colleges and university system) from the NRWIB.
11. After investigation, the Commission finds that in November 2013, DAS, that is part of the executive branch, issued a Request for Proposals for additional space for NVCC and on November 29, 2013 Respondent responded to this RFP with a proposal for the lease of commercial space in Danbury known as the "Pershing Building."

12. The Commission concludes therefore, and Respondent admits that, as of November 29, 2013, Respondent qualified as a "prospective State contractor," and was therefore was subject to the restrictions regarding campaign contributions contained in General Statutes § 9-612 (f) (2) (A) from that time.
13. Furthermore, the Commission concludes that Respondent is a "principal" of a prospective state contractor as owner of DaSilva Realty and therefore covered by the state contractor ban pursuant to General Statutes § 9-612 (g) (1) (F) (ii). It follows that Respondent was banned from making political contributions to:
 - (1) a gubernatorial committee pursuant to § 9-612 (f) (2) (A) (i);
 - (2) a party committee pursuant to § 9-612 (f) (2) (A) (iii).
14. The Commission concludes therefore that Respondent's contribution to *Team Boughton*, a gubernatorial candidate committee, was prohibited by the state contractor contribution ban and made in violation of General Statutes § 9-612 (f) (2) (A) (i). Further, the Commission concludes that Respondent's contribution to the *Danbury Democratic Town Committee*, a party committee, was prohibited by the state contractor contribution ban and made in violation of General Statutes § 9-612 (f) (2) (A) (i).
15. Additionally, the Commission concludes that Respondent's contributions through DaSilva Realty and Palace Theater, each solely owned by Respondent, to the *Danbury Republican Town Committee*, a party committee, were prohibited by the state contractor contribution ban and were made in violation of General Statutes § 9-612 (f) (2) (A) (i).
16. The Commission finds that pursuant to General Statutes § 9-612 (f), a separate "mitigating circumstances" analysis is not reached unless the Commission determines that a violation has occurred. Therefore, the Commission finds that the violations by Respondent of the state contractor contribution ban, as detailed herein, allows the Commission to determine whether *mitigating circumstances* exist concerning such violations pursuant to General Statutes § 9-612 (f) (2) (C).
17. General Statutes § 9-612 (f) (2) (C) provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether mitigating circumstances exist concerning the violation. If mitigating circumstances are found by the Commission, the contractual penalty is not automatic, but the awarding agency retains discretion to amend a contract or award a new contract. The agency may still void a contract at its discretion if a violation of § 9-612 (f) (2) (C) occurs, even if mitigating circumstances are found pursuant to that section.

18. In determining whether circumstances are “mitigating,” the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondent, as well as any contracts, agreements or pending bids or responses to RFPs between Respondent and the DAS would, although not excusing the conduct, tend to reduce or militate against the harm of pay-to-play and/or influence peddling the state contractor contribution ban is designed to prevent.
19. Specifically, the Commission has consistently and historically determined that pursuant to General Statutes §9-612 (f) the state contractor ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees for statewide office and/or party committees could wield over those state actors awarding such contracts and to prevent the awarding of contracts in exchange for campaign contributions and various pay-to-play campaign finance schemes. *See In the Matter of a Complaint by Carla Squatrito, et al.*, File No. 2010-112; *In the Matter of a Complaint by Gerald T. Weiner, et al.*, File No. 2010-099; *In Re David Baxter, et al.*, File No. 2009-080; *In Re Charles Shivery*, File No. 2007-381; *In the Matter of Ronald Nault and Luchs Consulting Engineers, LLC*, File No. 2007-353; *In Re JCJ Architecture*, File 2008-120; *In Re Antinozzi Associates*, File No. 2014-009, *In the Matter of a Complaint by Curtis Robinson, Plainville*, File No. 2014-169; and, *In the Matter of a Complaint by Raymond Baldwin, Trumbull*, File No. 2015-009.
20. The Commission, finds after investigation, that there is a lack of evidence that the recipients of prohibited contributions by Respondent had any nexus with, or ability to influence, the awarding of contracts or contract amendments or the acceptance of bid proposals between Respondent and DAS, pertaining to the rental of space for NVCC.
21. Additionally, and upon investigation, the Commission finds a lack of evidence that the contributions described in this agreement were made in connection with any requests for or offers of assistance between *Team Boughton*, the *Danbury Democratic Town Committee*, and the *Danbury Republican Town Committee* and/or their agents and representatives and the Respondent pertaining to Respondent’s response to the DAS RFP for additional space for NVCC that was made on November 29, 2013.
22. Pertaining to Respondent and his prohibited contributions detailed herein, the Commission determines that the following *mitigating circumstances* exist:
 - (1) Respondent consulted counsel regarding the contributions he made and upon learning of potential campaign finance violations caused this complaint to be filed on his behalf;
 - (2) There was no discussion or agreement by or between Respondent and the representatives of recipient committees, DAS or the State that Respondent might receive some favored treatment in exchange for the contributions that Respondent made after he became a "prospective State contractor."

- (3) There was no discussion, agreement, or understanding that any of the parties or their agents would provide assistance to Respondent in his efforts to compete for awards of State contracts in exchange for contributions to the recipient committees.
 - (4) Respondent only became aware of these state contractor contribution prohibitions after his response to the DAS RFP, submitted in November 2013, was identified as the preferred response by DAS.
23. The Commission concludes pursuant to General Statutes § 9-612 (f) (2) (C) that mitigating circumstances existed pertaining to the violations found in connection with the contribution by Respondent to Team Boughton, the Danbury Democratic Town Committee, and the Danbury Republican Town Committee such that Respondent is not statutorily barred from continuing, effectuating or otherwise implementing existing contracts, contractual obligations or being awarded contracts based on pending bids or RFPs between it and DAS.
24. The Commission determines after investigation that the policy behind General Statutes § 9-612 (f) to address “pay-to-play” and/or influence peddling schemes relating to campaign contributions and the awarding of state contracts was not circumvented under these narrow facts and circumstances and therefore allowing Respondent to continue its contractual relationships, obligations or bid proposals with DAS does not compromise the state’s interests to insure integrity in its campaign financing system.
25. Accordingly, the Commission concludes that these mitigating circumstances concerning the violations by Respondent do *not* bar DAS pursuant to General Statutes § 9-612 (f) (2) (C) from negotiating or fulfilling its contracts, other contractual obligations, or awarding or entering into such agreements with Respondent and DAS as an executive agency may exercise discretion consistent with authority under § 9-612 (f) (2) (C).
26. 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
27. It is understood and agreed that this agreement will be submitted to the Commission at its

next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used by either party as an admission in any subsequent hearing, if the same becomes necessary.

28. 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.

29. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter, and this agreement and order does not serve as a prospective ban on future contracts between Respondent and state agencies.

ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-612 (f).

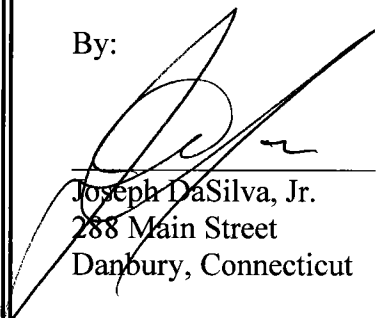
IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in the amount of eight hundred dollars (\$800.00) to the Commission on or before February 8, 2016.

The Respondent:

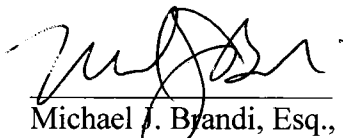
For the State of Connecticut:

By:

By:



Joseph DaSilva, Jr.
288 Main Street
Danbury, Connecticut

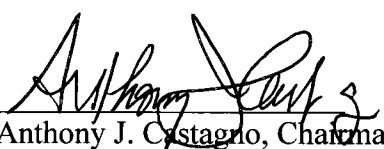


Michael J. Brandi, Esq.,
Executive Director and General Counsel and,
Authorized Representative of the State
Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 1-28-16

Dated: 2/2/16

Adopted this 10th day of February, 2016 at Hartford, Connecticut



Anthony J. Cystagno, Chairman
By Order of the Commission

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FEB 02 2016

**ENFORCEMENT
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