

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Michael Clark, Farmington

File No. 2017-054

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Brian Rubino, of the Town of Farmington, County of Hartford, 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.¹ In accordance herewith, the parties agree that:

Allegations

1. The Complainant here, the Chair of the Republican Town Committee, alleged that Brian Rubino and/or his company Ultimate Nutrition made expenditures to produce and air at least three radio advertisements clearly supporting a challenge slate of candidates for the Farmington Town Council in the September 12, 2017 primary for the Republican Party.
2. The challenge slate consisted of candidates Jon Landry, Justin Bernier, Jeffrey Apuzzo, and Paul Cianci, who formed a slate committee called "Responsible Farmington."
3. The Complainant alleged that the radio advertisements lacked any attribution as to who paid for them and no filings were made with either the Farmington Town Clerk or the SEEC detailing the costs of the advertisements in any regulated committee's report and/or as an independent expenditure.
4. The Complainant alleged that he had a "credible source" that the advertisements were paid for by Nick Aniello on behalf of Respondent Brian Rubino, the CEO of Ultimate Nutrition, a Farmington corporation and Mr. Aniello's employer.

¹ The following resolution is based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

5. Subsequent to the filing of this Complaint, the Complainant provided supplemental documentary evidence that Mr. Aniello placed the advertisements in the form of signed agreements with iHeartradio to place at least four spots.
6. The Complainant speculated that the advertisements cost from \$10,000-20,000 and could have been impermissibly coordinated with the “Responsible Farmington” slate, given that Brian Rubino lived in the same neighborhood as Paul Cianci, one of the candidates, and given that Mr. Rubino had maxed out his individual contribution limit of \$1,000 to “Responsible Farmington.”
7. However, the Complainant also admitted in the Complaint that he had no specific credible evidence to corroborate a claim that the expenditure was coordinated with the committee it appeared to support.

Law

8. General Statutes § 9-601b defines an expenditure as follows, in pertinent part:
 - (a) As used in this chapter and chapter 157, the term “expenditure” means:
 - (1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made to promote the success or defeat of any candidate seeking the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party;
 - (2) Any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail; or
 - (3) The transfer of funds by a committee to another committee.
9. The Commission has further clarified this statute by noting:

An expenditure, by definition, relates to a candidate—it is either to oppose or to benefit such candidate—and as such, applying the law

requires identifying to which candidate the expenditure relates, and by extension, which race they are in and for which office they are running.

The standards for this determination are less stringent the further before an election the communication is made. For example, if the communication is made longer than 90 days before an election, then the communication must go beyond the mere mention of a candidate to be for their benefit. In such cases, the Commission applies various indicia to determine whether the communication promotes, attacks, supports or opposes the secondary candidate, and whether, in fact, some financial allocation is required. See e.g. Declaratory Ruling 2011- 03. There are also fifteen exemptions from this definition of expenditure that must be applied. If any are present, then no allocation is required because it would not be considered an expenditure at all.

Within 90 days of an election, the legislature has provided a clean, bright-line rule that says when a clearly identified candidate is present in certain communications, then it is an expenditure to benefit (or oppose) the identified candidate.

In the Matter of a Complaint by John Mazurek, Wolcott, File No. 2014-170 at ¶¶ 8-10.

10. General Statutes § 9-601c defines an “independent expenditure” as follows, in pertinent part:

(a) As used in this chapter and chapter 157, the term “independent expenditure” means an expenditure, as defined in section 9-601b, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.

11. General Statutes § 9-601d requires that any person making independent expenditures over \$1,000 report such expenditures to the Commission, as follows, in pertinent part:

(a) Any person, as defined in section 9-601, may, unless otherwise restricted or prohibited by law, including, but not limited to, any provision of this chapter or chapter 157, make unlimited independent expenditures, as defined in section 9-601c, and accept unlimited

covered transfers, as defined in said section 9-601. Except as provided pursuant to this section, any such person who makes or obligates to make an independent expenditure or expenditures in excess of one thousand dollars, in the aggregate, shall file statements according to the same schedule and in the same manner as is required of a treasurer of a candidate committee pursuant to section 9-608.

12. General Statutes § 9-608 requires treasurers of candidate committees to file financial disclosure statements detailing all expenditures made by such committee.
13. General Statutes § 9-621 details the requirements for attributing various types of electioneering communications. Subsection (h) concerns electioneering communications produced through independent expenditures and reads, in pertinent part:

(h) (1) No person shall make or incur an independent expenditure for any written, typed or other printed communication, including on a billboard, or any web-based, written communication, unless such communication bears upon its face, as a disclaimer, the words "Paid for by" and the name of such person and the following statement: "This message was made independent of any candidate or political party." In the case of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall also bear upon its face the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission's Internet web site.

...

(3) *In addition to the requirements of subdivision (1) of this subsection, no person shall make or incur an independent expenditure for an audio communication broadcast by radio, satellite or Internet, unless the advertising ends with a disclaimer that is a personal audio statement by such person's agent (A) identifying the person paying for the expenditure, and (B) indicating that the message was made independent of any candidate or political party, using the following form: "I am (name of the person's agent), (title), of (the person). This message was made independent of any candidate or political party." In the case*

of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall state the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission's Internet web site. (Emphasis added.)

Investigation and Factual Findings

14. Brian Rubino was cooperative in this investigation insofar as he admitted that while he tasked his employee Nick Aniello to do the work, he was the person who was ultimately responsible for taking out the advertisements.

Radio Advertisements

15. Commission investigators conducted a thorough review of the allegations and confirmed that a total of five advertisements were placed in the Greater Hartford market by iHeartradio on September 11 and 12 (the day of the primary).
16. Each of the advertisements contained exhortations to vote for the Responsible Farmington slate and each named the candidates specifically. Below is a sample of one of the advertisements:

Are you a resident of Farmington, Connecticut?
Are you a registered Republican?
Are you tired of the bad ideas in Farmington?
Are you tired of a bunch of old, do nothing RINO's on the town council who do not represent you, who have made politics a career and do not want to hear any other ideas except their own bad ones?
Are you tired of your home value going down and your property taxes going up?
It is time for change in Farmington.
Vote for the Responsible Farmington platform in the Republican primarily this Tuesday September 12th
Vote for Justin Bernier, Paul Cianci, Jon Landry, and Jeff Apuzzo for Town Council.

Vote Line Band vote for change Farmington desperately needs.
Tell all your Farmington Republican friends to vote Tuesday as well.
For more information, visit Responsiblefarmington.com

17. The net cost of the radio advertisements was \$9,295 and was ultimately paid by Mr. Rubino personally, through Mr. Aniello, his employee.

“Responsible Farmington” and Mr. Rubino’s Connection

18. The investigation confirmed that Responsible Farmington was a municipal slate committee formed to support the campaigns of the aforementioned individuals for Town Council, as well as for David M. Houf for the Planning and Zoning Commission. Mr. Rubino lives in the same neighborhood as Mr. Cianci and he did max out his individual contribution limit to the slate committee.
19. At the time the advertisements were placed, the candidates named in the advertisements publicly denied having any knowledge of and/or involvement with the ads.
20. All of the candidates responded orally and in writing to the investigation. Each of them stated that they had no knowledge of the advertisements until the day they were aired. Each asserted that they either heard the advertisements themselves or were informed of them by others. Each of them denied any involvement in the planning, creation, or purchase of the ads.

Response

21. Respondent Brian Rubino asserted that he paid for the advertisements personally, but subordinated the actual task to his employee Nick Aniello.
22. However, he stated that he took full responsibility for failing to attribute the ads or report the independent expenditure.
23. He asserted that he was a new to political advertising and that he had never done something like that before.
24. A search of campaign contributions to state races yielded a record of only one contribution to a political campaign prior to the events of this case.

25. He stated that he did not understand that if these advertisements were made independent of Responsible Farmington, he personally had attribution and reporting obligations as an independent spender since the ads cost more than \$1,000.

Analysis

26. Considering the aforesaid, the matter is fairly straightforward concerning liability for Mr. Rubino. The Commission finds that by his own admission and supported by the investigation, Brian Rubino made expenditures totaling \$9,295 to place radio advertisements explicitly promoting the election at the September 12, 2017 primary of the “Responsible Farmington” slate and candidates Justin Bernier, Paul Cianci, Jon Landry, and Jeffery Apuzzo, specifically.
27. Based on the investigation, the Commission also concludes that the evidence does not support a conclusion that such expenditures were made with the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.
28. As such, the Commission concludes that Mr. Rubino failed to properly report the independent expenditures for the advertisements in violation of General Statutes § 9-601d.
29. Additionally, the Commission concludes that Mr. Rubino failed to include the required attribution on the advertisements in violation of General Statutes § 9-621.
30. General Statutes § 9-7b (a) (2) (A) provides that the Commission may assess a civil penalty of 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.
31. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a 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.

32. Failing to properly attribute and report independent expenditures is a matter the Commission takes seriously. See , File No. 2012-156 (\$6,928.90 civil penalty for making \$59,289.00 in independent expenditures without proper attributions or reporting).
33. There does not appear to be any bad faith at play here. While Mr. Rubino utilized an employee to take out the advertisements for him, this does not appear to have been made with any intent to somehow hide his participation. He has no prior history and sincerely appeared to have not understood that he had obligations under the laws concerning independent expenditures. Any claim of legal ignorance is not an excuse, but in this case it appears to at least be genuine.
34. It should be noted that the Commission has historically distinguished attribution cases where it is clear who the spender is on the face of the communication from those, like this case, where there is no way to discern who the spender is from the content of the communication. See *In the Matter of a Complaint by Michael Gongler and Victor L. Harpley, Cromwell*, File No. 2009-126; *In the Matter of a Complaint of John D. Norris, Southbury*, File No. 201.1-108; *In the Matter of a Complaint of Arthur Scialabba, Norwalk*, File 2011-125; *In the Matter of a Complaint of Robert W Prentice, Wallingford*, File No 2011-134; *In the Matter of a Complaint of Arthur Scialabba, Norwalk*, File 2012-011; *In the Matter of a Complaints of Pete Bass, New Milford*, File 2012-158 & 162; *In the Matter of a Complaint of Michael J. Flint, Lakeville*, File No. 2013-135.
35. In the instant case Mr. Rubino made \$9,295 in independent expenditures without any attribution or reporting.
36. The closest analog to this case is a series of three cases consolidated into one settlement. *In the Matter of a Complaint by Joyce Krinitsky and Gregory Showers, Plymouth*, File Nos. 2017-070, 2017-076 & 2017-084 involved independent expenditures totaling \$2,604 to produce and disseminate three electioneering mailers supporting municipal candidates in the Town of Plymouth during the 2017 election. The Commission entered into a Consent Agreement in which the respondent in those cases paid a civil penalty of \$750.
37. The respondent in *Krinitsky* was a reluctant one in that case and the Commission needed to subpoena documents to confirm certain pertinent facts in the matter. The Commission took that into account when setting its range for settlement.
38. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondent agrees, that a civil penalty of \$1000 is appropriate here. The amount of the independent expenditure is larger than that in *Kritinsky*, but the Respondent has not been uncooperative here.

39. 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.

40. 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.

41. 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 of the Respondent in this or any subsequent proceeding, if the same becomes necessary.

42. 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 HEREBY FURTHER ORDERED THAT the Respondent will henceforth strictly comply with General Statutes § 9-601d, 9-608, and 9-621; and

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in the amount of one thousand dollars (\$1000.00) to the Commission, in full and final resolution of this matter.

The Respondents:



Brian Rubino
Farmington, CT

For the State of Connecticut:



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

Dated: February 10th, 2020

Dated: 2/11/2020

Adopted this 19th day of February of 2020 at Hartford, Connecticut



Anthony I. Castagno, Chair Stephen Penny
By Order of the Commission