

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by James Millington, Fairfield

File No. 2017-075

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Jennifer Hochberg-Toller and John Tyson Toller, of the City of Bridgeport, County of New Haven, 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:

1. The Complainant here alleged that from on or about August 2016 through the filing of the Complaint on or about November 2, 2017 Fairfield electors Jennifer Hochberg-Toller and John Tyson Toller were not bona fide residents at the address on Church Hill Road at which they were registered, but had voted in at least two elections from that address during the time period.
2. Additionally, the Complainant alleged that during the period Respondent Jennifer Hochberg-Toller held the elected offices of Fairfield Democratic Town Committee member and Fairfield Representative Town Meeting member and Respondent John Tyson Toller held the elected office of Justice of the Peace.
3. Specifically, the Complainant alleged that on information and belief the Fairfield home on Church Hill Road was the familial home of Mrs. Hochberg-Toller and that the couple had moved out and signed a lease for a residential property in the neighboring City of Bridgeport in approximately August 2016.
4. 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:
 - (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.)

5. 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.)
6. 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. . . .”)

7. Voting in a referendum, primary, or election in which a person is not qualified is a violation of General Statutes § 9-7b (a)(2)(C), which reads:

- (a) 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,

8. The investigation revealed that Mrs. Hochberg-Toller had a longtime association with the Town of Fairfield, the town in which she grew up. Mrs. Hochberg-Toller ran for the Representative Town Meeting in 2011 and was reelected in 2013 and 2015. She ran for reelection in 2017, but withdrew her candidacy on October 26, 2017 after the instant Complaint was filed. Mrs. Hochberg-Toller personally confirmed that she served on the Fairfield DTC as well. Mrs. Hochberg-Toller has an extensive voting record in the Town of Fairfield.
9. The investigation revealed that Mr. Tyson Toller also had a longtime association with the Town of Fairfield, in which he also grew up. Mr. Tyson Toller has been a Justice of the Peace, appointed by the Democratic Party, since at least January 2013 until he resigned from the post on or about October 30, 2017 after the filing of the instant Complaint. Mr. Tyson Toller also has an extensive voting record in the Town of Fairfield.
10. The investigation revealed that the property on Church Hill Road in Fairfield, which has been owned by the parents of Ms. Hochberg-Toller since 1973, is her childhood home. Mrs. Hochberg-Toller has been registered to vote at this address since shortly after her 18th birthday in 1992. Mr. Tyson Toller has been registered to vote at this address since he registered there in April 2013. Before that, Mr. Toller was registered at an address on Applegate Road in Fairfield, his familial home.
11. The investigation revealed that the rental records at a residential address on Anton Street in Bridgeport include leases signed by both Mrs. Hochberg-Toller and Mr. Tyson Toller for

the same residential unit dating back to a lease beginning on September 1, 2014, with yearly extensions executed through at least August 2019. The cost of the unit has remained steady at \$775 during the duration of these leases.

12. As stated above, both Respondents were lifelong voters in Fairfield. Since they signed the lease in Bridgeport September 1, 2014, they each cast a ballot from the Fairfield address during the following:

06/06/2017	State Special Election
11/08/2016	State General Election
04/26/2016	Presidential Preference Primary
11/03/2015	Municipal General Election
11/04/2014	State General Election

13. The Respondents were prompt and cooperative in response to the instant investigation. The Respondents did not deny that they have been renting an apartment in Bridgeport from September 1, 2014. They asserted that they both are individuals of modest means and had been living with Mrs. Hochberg-Toller's parents at the property when, at the age of 40 and 34, they were asked to move out. However, they asserted that because of their financial circumstances, they could not find any rental options in Fairfield that they could afford.
14. Accordingly, they asserted that they had to look next door to Bridgeport to a more modestly priced apartment that they ended up accepting as all they could afford.
15. However, they asserted that as lifelong residents of Fairfield, they had every intention of making their stay in Bridgeport temporary and moving back to Fairfield as soon as it was possible to do so. In the interim, it was their understanding that since they still had access to the property at Church Hill Road they could maintain certain legal ties to Fairfield, including remaining as registered voters and participating in Fairfield elections. In Mrs. Hochberg-Toller's case, she felt so strongly about her ties to Fairfield that she ran for the RTM 4 times and served for almost 6 years, until the filing of the instant Complaint.
16. Neither Respondent has cast a ballot from either address during the pendency of this matter.
17. Turning to the question here, the matter is fairly straightforward concerning residency and liability. By their own admission and supported by the investigation, while the Respondents maintained a connection to the Fairfield property, they had no opportunity and/or present intent to return to that specific address, despite appearing to genuinely intend to return to the Town of Fairfield as residents at an undetermined time in the future. The

Respondents do not assert, nor is there evidence, that they will be returning to that address as anything other than visitors to Mrs. Hochberg-Toller's parents.

18. Accordingly, the Commission concludes that the Respondents were not bona fide residents at the Fairfield address from approximately September 1, 2014 forward. As such, the Commission concludes that they were not eligible to cast the ballots from that address and violated General Statutes § 9-7b (a) (2) (C) by impermissibly casting ballots in Fairfield during the 5 events listed above.
19. General Statutes § 9-7b (a) (2) (C) provides that the Commission may assess a civil penalty of 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. 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.
20. Casting a ballot from an address for which you do not maintain a valid bona fide residence is a serious matter. And the evidence maintained during the investigation here establishes that the Respondents cast ballots in Fairfield on five occasions without having a true and fixed residence in town, despite having access to a property there. That said, there is no evidence that there were any primaries or elections during that period for which the Respondents' vote could have been the deciding ballot.¹
21. There does not appear to be any bad faith at play here. These Respondents have no prior history in this area and acted openly—all votes were in person and only in Fairfield. Mrs. Hochberg-Toller even served on the Fairfield Democratic Town Committee and Fairfield Representative Town Meeting for a time. However, the Commission believes that Mrs. Hochberg-Toller's experience both as a party and elected official is an aggravating factor, insofar as there is appropriately a greater expectation of knowledge and understanding in

¹ By contrast, see *In the Matter of a Complaint by Allen Palmer, Groton*, File No. 2007-227, in which the Commission assessed a \$4,000 civil penalty where the respondent's single vote caused a tie in a general assembly primary in the district in which she should not have been voting

someone so intimately involved in the electoral process—and, by extension, that person's spouse.

22. The Commission's recent cases in this area have treated first-time offenders with a light touch when the evidence suggests that the voter simply did not understand that they were no longer permitted to vote at their prior voting address. The most similar to this one is *In the Matter of a Complaint by Peter Massaro, West Haven*, File No. 2018-025 (respondent voted in at least six primaries and elections from address that she owned but at which she no longer lived; henceforth order with no civil penalty)
23. *See also, In the Matter of a Referral by the Greenwich Registrars of Voters*, File No. 2018-004 (violation but henceforth order where voter changed addresses within the same town and did not realize that she was in a new voting district and needed to change her registration); *In the Matter of a Complaint by Bernice C. Bartlett, East Hampton* File No. 2017-059 (violation but henceforth order where voter registered using EDR and cast ballot using address on his license, at which he no longer lived); *In the Matter of a Referral by the Greenwich Registrars of Voters*, File No. 2017-030 (violation but henceforth order where voter cast two ballots over a seven year period)
24. The last case in which the Commission fined a voter under similar facts occurred in *In the Matter of a Referral by Tina Gardner and Carole Young-Kleinfeld, Wilton*, File No. 2012-175. In *Gardener* the voter continued to remain registered at an address that was previously his family home. Two of the votes were cast after he moved out, but while his parents still owned and resided in the home. A third vote was cast two years after his parents had sold it to someone unknown to him. The Wilton registrars were conscientious in keeping up their lists and moved him to inactive before the third vote, which required the voter to swear an oath that he was a bona fide resident at the address at the time he presented himself to vote. The Respondent in *Gardner* settled for a civil penalty of \$500 and a henceforth order.
25. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondents agree, that a civil penalty of \$250 each is necessary here. This was an address at which they previously maintained a bona fide residence. The evidence suggests that their ignorance was genuine and shortly after they were presented with this Referral, they took actions to remediate the issue. However, Mrs. Hochberg-Toller's experience as a party official and as an elected representative creates a greater level of expectation that she and her husband should have known that casting ballots and holding office in a municipality in which they did not reside was not permitted.

26. The Respondents' civil penalty will be waived in this instance due to their demonstration in a lawfully executed SEEC Financial Affidavit to the Commission concerning their inability to pay.
27. The Respondents admit all jurisdictional facts and agree 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 Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
28. The Respondents waive:
 - 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. 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 Respondents in any subsequent hearing, if the same becomes necessary.
30. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

