

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Sean Byrnes, Westport

File No. 2017-086

**AGREEMENT CONTAINING CONSENT ORDER**

This Agreement, by and between Paul Lebowitz, of the Town of Westport, County of Fairfield, 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 alleges that the Respondent had abandoned bona fide residence at an address on Redcoat Road in Westport in or about March 2017 and was not a bona fide resident at the time that he cast a ballot from that address in the November 7, 2017 Municipal General Election.
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:
  - (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.)
3. 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.)

4. 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. . . .”)

5. General Statutes § 9-170 reads:

At any regular or special town election any person may vote who is registered as an elector on the revised registry list of the town last completed and he shall vote only in the district in which he is so registered, provided any person may vote whose name is restored to the list under the provisions of section 9-42 or whose name is added on the

last week day before a regular election under the provisions of section 9-17. Each person so registered shall be permitted to vote unless he is not a bona fide resident of the town and political subdivision holding the election or has been convicted of a disfranchising crime. Any person offering to vote and being challenged as to his identity or residence shall, before he votes, prove his identity with the person on whose name he offers to vote or his bona fide residence in the town and political subdivision holding the election, as the case may be, by the testimony, under oath, of at least one other elector or by such other evidence acceptable to the moderator. (Emphasis added.)

6. The Respondent here was prompt in his replies and thorough in responding to requests from the Commission. The Respondent asserted that he did vacate the premises at Redcoat Road in or about March 2017, as alleged. He asserts that he moved from the Redcoat Road address to an address on Franklin Street in Westport and at the time he cast the ballot in the November 7, 2017 he lived on Franklin Street.
7. The Respondent asserted that he rented the Franklin Street property on a month-to-month basis as he attempted to purchase a home in Westport and ultimately signed a one-year lease on December 1, 2017 after those efforts were not successful.
8. In support of his defense, the Respondent submitted rent receipts dating back to April 1, 2017 from Brewsharp, LLC, the managing company for the property on Franklin Street. Additionally, he submitted a signed statement from John Brewster, agent for Brewsharp, LLC, who supported the Respondent's claim that he started a month to month lease for April 1, 2017 and a year lease starting December 1, 2017.
9. The Respondent asserted and the voter records confirm that after he signed the one-year lease, the Respondent transferred his voter registration from the Redcoat Road address to the Franklin Street address.
10. As an initial matter, the question here is fairly straightforward concerning residency at the Redcoat Road address on the date in question. The Commission concludes, and the Respondent does not factually deny, that he was not a bona fide resident at the Redcoat Road residence at the time of the November 7, 2017 Municipal General Election.
11. However the Commission finds that the investigation confirmed that the Respondent remained a resident in the Town of Westport, at the Franklin Street address.
12. Indeed, the investigation revealed that had this been a state election, the ballots for either residence would have been identical. *In the Matter of a Complaint of Andre Grandbois,*

*Plainville*, File No. 2015-156 in involved an election in which the respondent's registered address and actual address were in the same voting district, for which the ballots were identical. In that case, the Commission took no further action as the issue was largely administrative.

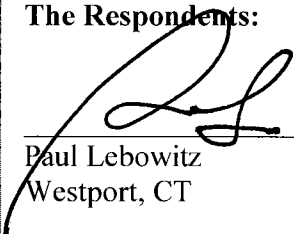
13. Here, the ballots were *nearly* identical: five of the six offices up for election were the same in both districts. However, as Westport elects members to its Representative Town Meeting, the Respondent did end up voting in a race for which he was not an eligible elector.
14. Accordingly, the Commission concludes that the Respondent violated General Statutes §§ 9-7b (a) (2) (C) and 9-170 for voting the District 3 ballot.
15. General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145, part V of chapter 146, part I of chapter 147, chapter 148, section 7-9, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-23r, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-232i to 9-232o, inclusive, 9-404a to 9-404c, inclusive, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o. 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.
16. Impermissibly casting a ballot in a district in which a voter is not eligible is something that the Commission takes seriously.
17. However, here we have a Respondent who did not act in bad faith when he cast his ballot in the same town in which he lived, but in the incorrect Representative Town Meeting district. He has no previous history of similar acts or omissions before the Commission.
18. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondent agrees, that a civil penalty is unnecessary here and that an agreement and henceforth order will suffice in this matter to achieve future compliance.

19. 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.
20. 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.
21. 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 Respondent in any subsequent hearing, if the same becomes necessary.
22. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

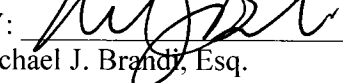
ORDER

That the Respondent will henceforth strictly comply with General Statutes § 9-12 and 9-170.

**The Respondents:**

  
\_\_\_\_\_  
Paul Lebowitz  
Westport, CT


**For the State of Connecticut:**

BY:   
\_\_\_\_\_  
Michael J. Brandt, Esq.  
Executive Director and General Counsel and  
Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity St., Suite 101  
Hartford, CT

Dated: 4/5/18

Dated: 4/18/18

Adopted this 18<sup>th</sup> day of April of 20 18 at Hartford, Connecticut

  
\_\_\_\_\_  
Anthony J. Castagno, Chair  
By Order of the Commission

RECEIVED  
STATE ELECTIONS

APR 06 2018

ENFORCEMENT COMMISSION