

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

In the Matter of a Complaint by David Mullane, Stratford

File No. 2017-087

**AGREEMENT CONTAINING CONSENT ORDER**

This Agreement, by and between Thomas J. Malloy, of the Town of Woodbury, County of Litchfield, 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:

**Allegations**

1. Specifically, the Complainant here alleged that longtime Stratford resident and elector Thomas Malloy moved from Selesky Drive to Lilibeth Drive, his sister's home in or about July 2014 based on sales records of the Selesky address.
2. The Complainant further alleged that the Respondent did not change his voter registration and continued to cast ballots from the Selesky address while actually living at Lilibeth Drive. The Complainant further alleged that the Respondent was building a home in Woodbury that was not yet completed at the time of the July 14th sale.
3. The Complainant further alleged that based on the permit records of the Woodbury home, the Respondent moved out of the Lilibeth Drive home and into the new home on Tuttle Dr. in Woodbury permanently in approximately August 2016.
4. The Complainant alleges that after moving permanently to Woodbury in 2016, the Complainant moved his registration in June 2017 back to the Lilibeth Drive address despite no longer maintaining bona fide residency there.
5. Complainant alleged that the Respondent only registered in June 2017 in Stratford so that he could remain on the Stratford Housing Authority, for which he was the Chair at the time.
6. 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.)

7. 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.)

8. 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. . . .”)
9. 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,

## **Investigation**

### Registration History

10. The Commission’s investigation confirmed through the records of the towns of Stratford and Woodbury that the Respondent was registered at Selesky Drive in Stratford from 1983 through October 6, 2016 at which point he registered at Tuttle Drive in Woodbury. The Respondent then registered to vote back in Stratford at Lilibeth Dr. on or about June 20, 2017 through January 9, 2018 at which point he registered back at Tuttle Drive in Woodbury, where he remains registered today.

### Residence History

11. The investigation revealed that starting in the early 1980s the Respondent lived at Selesky Drive until it was sold on or about July 15, 2014. The plan appeared to have been to move to Woodbury, however the home required construction, so the Respondent moved into his sister’s home at Lilibeth Drive in Stratford.

12. The Respondent appeared to have remained at Lilibeth Drive until approximately October 2016, at which point he moved permanently into the home at Tuttle Drive in Woodbury.

Voting History

13. The investigation revealed that from the date of sale of the property at Selesky Drive in Stratford until moving to Woodbury 2016, the Respondent voted during the following primaries and elections while residing at the Lilibeth address:

11/03/2015	Municipal General Election
11/04/2014	State General Election
08/12/2014	State Primary

Stratford Housing Authority

14. Records found during the investigation indicate that Mr. Malloy served as a Commissioner on the Stratford Housing Authority from approximately 2013 until he resigned from the Authority in or around December 2017.
15. The minutes of the August 2017 meeting of the Authority reflect that the Respondent represented that “he will be establishing residence out of town shortly;” and that he would only fulfill his obligations as a Commissioner until a new Commissioner was sworn in to replace him.
16. However, ultimately the Respondent resigned in mid-December 2017—just after the filing of the instant complaint.

**Response**

17. The Respondent did not deny that he resided at Selesky Drive in Stratford, then Lilibeth Drive in Stratford, and then finally Tuttle Drive in Woodbury on the dates established in the investigation and did not deny that he did not reside at the Lilibeth Drive address at the time he submitted the 2<sup>nd</sup> Lilibeth VRA in June 2017.

**Analysis**

18. Turning to the first question here, the matter is fairly straightforward concerning residency and liability for the 08/12/2014, 11/04/2014, and 11/03/2015 votes in Stratford. By his own

admission and supported by the investigation, the Respondent voted using an address at which he did not reside and for which he had no opportunity and/or present intent to return.

19. However, while these are all legal violations of General Statutes § 9-7b (a) (2) (C), they were ministerial in nature, as he had established residency at Lilibeth Drive which is located within the same voting precinct and whose residents vote the exact same ballots.
20. In this instance, where the voter simply fails to move his registration, but his bona fide residence was located within the same precinct, the Commission has voted to take no further action. *See, e.g., In the Matter of a Complaint of Andre Grandbois, Plainville*, File No. 2015-156 (elector registered and voted from his business address, which was located in the same voting precinct as his bona fide residence address; no further action).
21. Accordingly, with *Grandbois* in mind, the Commission will take no further action as to the 08/12/2014, 11/04/2014, and 11/03/2015 votes here.
22. Turning to the question of the VRA that the Respondent submitted on or about June 20, 2017 to register to vote at Lilibeth Drive in Stratford, the Respondent admitted that he no longer lived in Stratford at this time, but had established his permanent residence in Woodbury.
23. Accordingly, the Commission concludes that the Respondent violated General Statutes §§ 9-12 & 9-20 for impermissibly registering to vote at Lilibeth Drive at that time.
24. General Statutes § 9-7b (a) (2) (A) 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 to 9-19k, inclusive, 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.
25. 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.

26. Attempting to register to vote from an address for which you do not maintain a valid bona fide residence is a serious matter, even if the motivations to do so are altruistic.
27. While the Respondent never voted using the registration, the record suggests that his motivation for registering may have been connected to maintaining his membership on the Stratford Housing Authority (of which he was the Chair). While his motivations may have been genuinely well meant (the Housing Authority Commission is an uncompensated position for which the Town Council had trouble finding volunteers, according to the Stamford Advocate article mentioned above), the Commission cannot say that this registration was done in "good" faith simply because the aim was to continue an albeit laudable public service.<sup>1</sup>
28. Moreover, the Respondent's history of public service to Stratford, while commendable, is an aggravating factor, insofar as there is appropriately a greater expectation of knowledge and understanding in someone so intimately involved in the political landscape that registering to vote where you do not reside is not permissible.
29. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondent agrees, that a civil penalty of \$300 is appropriate here. This was an address at which he previously maintained a bona fide residence. However, there is no question that he no longer maintained a bona fide residence there and had no reasonable prospect for return. Moreover, his political experience creates a greater level of expectation that he should have known that registering to vote (and serving on a commission) in a municipality in which he did not reside was not permitted.
30. 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.

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<sup>1</sup> By some accounts, his service appeared to be genuinely appreciated, on both sides of the aisle. After the Respondent's resignation and this Complaint became public, the Stamford Advocate reported that the Respondent received bi-partisan support for his service on the Housing Authority, with at least one opposition Democratic Party member quoted praising his service to that commission.

31. 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.

32. 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.

33. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

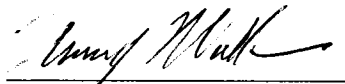
ORDER

IT IS HEREBY ORDERED THAT the Commission will take no further action concerning the Respondent's 08/12/2014, 11/04/2014, and 11/03/2015 votes in Stratford.

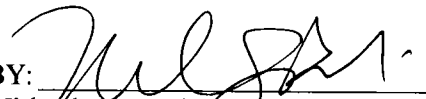
IT IS HEREBY FURTHER ORDERED THAT the Respondent will henceforth strictly comply with General Statutes § 9-19 and 9-20; and

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in the amount of three hundred dollars (\$300.00) to the Commission, in full and final resolution of this matter.

**The Respondents:**

  
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Thomas J. Malloy  
Woodbury, CT

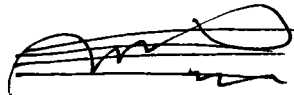
**For the State of Connecticut:**

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: 11 February 2020

Dated: 2/13/2020

Adopted this ~~14~~ day of ~~February~~ of 2020 at Hartford, Connecticut

  
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Anthony J. Castagno, Chair  
By Order of the Commission  
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