

**STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Thomas Brummett, File No. 2018-001B

RESPONDENTS:

Michael Farina  
68 Bridge Street, Suite 210  
Suffield, CT 06078

The Vinci Group  
68 Bridge Street, Suite 210  
Suffield, CT 06078

Geoffrey Luxenberg  
68 Bridge Street, Suite 210  
Suffield, CT 06078

January 22, 2019

**Final Decision**

The undersigned Hearing Officer heard the above-captioned matter as a contested case on December 13, 2018 pursuant to Chapter 54 of the Connecticut General Statutes, § 9-7b of the Connecticut General Statutes and § 9-7b-35 of the Regulations of Connecticut State Agencies, at which time appeared Attorneys William B. Smith and James M. Talbert-Slagle for the State of Connecticut, and Attorney Derek Donnelly for the Respondents. Documentary and testimonial evidence was presented. This matter comes before the Commission from a complaint filed by Thomas Brummett, of Canterbury, on January 17, 2018 (the "Complaint").

After careful consideration of the entire record, the State Elections Enforcement Commission (hereinafter the "Commission") makes the following findings:

1. Commissioner Michael J. Ajello was designated as the Hearing Officer for this matter by the Commission.
2. Respondent Michael Farina was, at all relevant times, owner and principal of The Vinci Group (hereinafter "Vinci").
3. Respondent Geoffrey Luxenberg was owner and principal of Vinci during a portion of the period in which these events took place, but departed Vinci in July 2017.
4. During the 2015 municipal election, the Canterbury Democratic Town Committee (hereinafter "CDTC"), through its agents Chris Pitts and Peter Kelly, who was chair of the CDTC, hired Vinci to provide campaign related materials for the slate of candidates that the CDTC was supporting. Mr. Pitts described his relationship to Mr. Kelly as "an assistant."

5. Also during the 2015 municipal election, a Democratic candidate for first selectman of Canterbury, Kim Kelly, hired Vinci to provide campaign related materials for her campaign. She also contracted with Vinci using Mr. Pitts as an intermediary.

6. After the 2015 election was over, on November 9, 2015, Mr. Pitts presented to Loreen Hegan, treasurer of the CDTC, a bill for the campaign materials provided by Vinci. This bill included line items for four mail pieces, lawns signs, a slate card and a newsletter. The total of the bill was \$4,060.28.

7. Ms. Hegan, the town committee's treasurer of over thirty years, never had any direct contact with Vinci and was unaware of any contract for campaign materials. She had, previously, paid two other Vinci bills, for \$855.21 and \$1,402.04, respectively. The new bill (an email from Mr. Pitts with invoices attached) listed more invoices, including several that indicated that they were related to the Kim Kelly campaign as well as the CDTC, totaling \$4,060.28. Ms. Hegan believed the invoice was sent to the CDTC in error and that it should be paid by Kelly's campaign. The CDTC also had virtually no funds in its account and could not pay the bill if it had chosen to. She had not reported these expenditures being incurred in any of her previous financial filings (as she did not know about them). She also did not report this expense being incurred on the next filing, due January 10, 2016, as she believed it was sent to her in error.

8. On or about July 7, 2016, Mr. Luxenberg sent an email to Mr. Farina, Mr. Pitts and Ms. Kelly alerting them to the unpaid status of bills to the CDTC and the Kelly campaign. The email stated that there were two unpaid invoices to the CDTC totaling \$2,079.49. The amount was wrong because Vinci had misfiled two invoices. The email was not sent to Ms. Hegan, the treasurer.

9. Mr. Pitts, Mr. Luxenberg and Mr. Farina all testified that they had multiple, regular conversations (via phone and text) about the outstanding invoice. They testified that there was always an expectation of payment from the CDTC. Aside from the original email with the invoices, dated November 9, 2015, and the one email, dated July 7, 2016, they produced no documentary evidence of any attempts to collect the debt.

10. Subsequent to the July 7, 2016 email, but before October 11, 2016, Mr. Kelly contacted Ms. Hegan and instructed her to pay the Vinci bill. After that, she contacted Mr. Pitts about her concerns about the validity of the bill. Mr. Pitts explained that the invoices that indicated they were for Ms. Kelly's campaign, were also for the CDTC, because they involved mailings that supported candidates that were on the CDTC slate. The CDTC owed a set fraction of those bills. However, even with this new understanding of the debt, she still could not pay the bills because the committee had a balance of approximately \$400. Nevertheless, on October 11, 2016, she amended her January 10, 2016 filing to show that the CDTC had incurred an expense of \$4,060.28. She dated the expense incurred back to the date she received the invoice, November 9, 2015. That

balance carried forward on all following reports, until it was paid in 2018, after the filing of this complaint.

11. At no time did Ms. Hegan ever receive any invoices directly from Vinci, or was ever contacted for payment by Vinci, Mr. Farina or Mr. Luxenberg, at least until after this complaint was filed. All her communication about the matter came through Mr. Kelly and Mr. Pitts.

12. On January 17, 2018, the instant complaint was filed alleging, in essence, that the CDTC had not reported the Vinci expenses timely and that the unpaid debts constituted an impermissible in-kind contribution from a business, because they were not paid timely, and that the contribution was not reported correctly.

13. Loreen Hegan was named as a respondent in the original complaint, but is not the subject of this decision because she has entered into a Consent Order with the Commission. *In the Matter of Thomas Brummett, Canterbury*, File No. 2018-001A. As a result of that Consent Order, Ms. Hegan paid a \$500 fine for violations of General Statutes § 9-613 and § 9-622 (10).

14. General Statutes § 9-613 provides, in relevant part, as follows:

**Business entities. (a) Contributions or expenditures for candidate or party prohibited.** No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party, except as provided in subsection (b) of this section. No business entity shall establish more than one political committee. A political committee shall be deemed to have been established by a business entity if the initial disbursement or contribution to the committee is made under subsection (b) of this section or by an officer, director, owner, limited or general partner or holder of stock constituting five per cent or more of the total outstanding stock of any class of the business entity. . . .

*(Emphasis added.)*

15. General Statutes § 9-622 (10) provides, in relevant part, as follows:

**Illegal practices.** The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter;

16. The crux of the issue in this case is whether the lack of diligence by a business in collecting a debt from a committee at some point transforms the debt into an impermissible in-kind contribution. Unlike in the earlier Consent Order, here we have a full record of evidence and testimony to evaluate the circumstances surrounding the events that led to the present complaint.

17. A survey of Commission's case law shows that this is somewhat of a novel situation. There have been other cases where a business was found to have made an impermissible in-kind contribution to a committee, but all are distinguishable from the facts here. See e.g. *In re the Committee to Elect Romano*, File No. 2012-036.

18. *In the Matter of a Complaint by Peter J. Tracey*, File No. 2003-150, a business was found to have violated General Statutes § 9-613 by making an impermissible in-kind of free rent for a town committee's headquarters. In that case, there was never an expectation of payment by the landlord's business—the expectation was that there would be no rent. Here, there was evidence of contemporaneous invoices by Vinci to the CDTC (via Mr. Pitts) which evinced an expectation of payment, at least at one point in time.

19. *In the Matter of a Complaint by Paul M. Carver*, File No. 2006-137, the Commission first applied what has come to be known as the 45-day rule. There a treasurer failed to reimburse herself for expenses that she had paid on behalf of a candidate committee. Note that the treasurer was both reimburer and reimbursee. The treasurer properly disclosed the debts, but they were just not repaid timely. The Commission recognized that this presented a legal dilemma that needed resolution: at what point does an unpaid debt become a loan to the committee (and thus a contribution)?<sup>1</sup> To resolve this problem, the Commission articulated the following rule:

Where a committee worker uses personal funds to make authorized expenditures on behalf of the committee for which reimbursement is sought, such payments are deemed to be contributions to the committee to the extent that they are not reimbursed by the committee to the worker within 45 days from the date that such

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<sup>1</sup> General Statutes § 9-601a provides, in relevant part, as follows: "Contribution" defined. (a) As used in this chapter and chapter 157, "contribution" means: (1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made to promote the success or defeat of any candidate seeking the nomination for election, or election 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. . .

expenditure was made. This rule is necessary in order to avoid the unintended consequence of making an excessive contribution.

20. Certainly, an uncollected debt—and especially one that is eventually forgiven and forgotten—can be something of value to a committee, akin to a loan or an in-kind, and thus, a contribution. This would be true if it were an individual or a business supplying the goods or services. So this case presents a similar issue as *Carver*, albeit with different facts.

21. *In the Matter of a Complaint by Sheri Lepper, File No. 2014-157*, a more complicated set of facts led to a more nuanced application of the 45-day rule. In *Lepper*, substantial reimbursements to committee workers went unpaid for many months. In applying its precedent to those facts (where the reimburer and reimbursee were *not* the same person, as they were in *Carver*), the Commission softened the rule a bit:

To clarify the Commission's position concerning timely reimbursement of committee workers: All reimbursements of committee workers must be reimbursed within a reasonable period of time. Any reimbursement of a committee worker within 45 days after an expenditure for which the worker seeks reimbursement, shall be deemed to be a reimbursement within a reasonable period of time. Any reimbursement that is made more than 45 days after the committee worker makes an expenditure for which he seeks reimbursement may be considered reasonable or not based upon the Commission's specific assessment of the facts of that case. The Commission further notes that the more time that passes beyond the 45th day after an expenditure is made, the less likely it is that the Commission will find that the reimbursement was made in a reasonable period of time.

*(Emphasis added.)*

22. The case also drew a line based on whether or not the worker seeking reimbursement requested reimbursement within a reasonable time:

As the expenditures by the committee workers appear to have been approved by the treasurer and said committee workers timely requested reimbursement and provided the required documentation, the evidence would not support an allegation that the committee workers made an impermissible contribution. Accordingly, they have not been named as respondents.

23. From the committee's vantage and that of a committee worker (or consultant as the case may be), the 45-day rule is a useful tool to determine when an unreimbursed debt becomes a contribution, but it cannot be applied in a vacuum. As the Commission seemed to concede in

*Lepper*, when the person seeking reimbursement is not the treasurer herself, and the person has no control over when the reimbursement is made apart from requesting or demanding it in a timely manner, then it becomes difficult to prove that the person was, in fact, trying to make a contribution, even if more than 45 days passes. The Commission recognizes that treasurers cannot convert unpaid-for goods or unreimbursed debts into the contributions of unwilling contributors by fiat, or simple lack of funds.

24. Such is the case here. Evidence shows that Vinci sent its invoices to Mr. Pitts, who was acting as agent of the CDTC, shortly after the expenditures were made. Invoices are an attempt to collect a debt. These invoices were presented to the treasurer for payment at that time. Although the treasurer thought they were sent by mistake, over the course of the next year, she came to understand differently, and reported the expenses as incurred on the CDTC's financial disclosure statements. This all occurred more than a year before the instant complaint was filed.

25. Testimony was presented from Mr. Farina, Mr. Luxenberg, Mr. Pitts, and Ms. Hegan that the debt was acknowledged, payment was expected on all sides, and at least nominal efforts are purported to have been made to collect it. Ms. Hegan testified, and the CDTC's filings show, that the CDTC did not have the money to pay the debt. Ms. Hegan testified, credibly, that she treated the invoices as a debt to be paid, and that the debt was not forgiven by Vinci. She testified that the chairman of the CDTC, Peter Kelly, throughout this time period was trying to raise the money to pay the debt.

26. There was no evidence presented that Vinci had written off the debt, on its tax returns for example, or of any communications indicating that the debt was forgiven.

27. As a result of the evidence presented, and the specific assessment of these facts, the Commission cannot conclude that the unpaid invoices of Vinci were converted into in-kind contributions by the lack of documented, diligent collection practices by Vinci or the CDTC's inability to pay in a reasonable timeframe.

28. Nevertheless, there a lot of things wrong with this picture that precipitated this serious lapse in CDTC's handling of its campaign finances.

29. Foremost is Vinci's failure to deal directly with the treasurer of the committee for whom it was working. If it, Mr. Farina or Mr. Luxenberg, had directly contacted Ms. Hegan, prior to the expenditures being made then the committee likely would not be obligated for a debt for which it had no funds to pay. The law requires treasurers to make expenditures for committees, for which they are liable: this is axiomatic in campaign finance law, and it is difficult to understand how

experienced campaign consultants and vendors would not know this.<sup>2</sup> The debt, if pre-authorized by the treasurer despite the lack of funds, would then have been promptly disclosed, instead of a year later. Ms. Hegan, in all likelihood, would not have been the Respondent in this matter. As a result of her involvement, she has agreed to pay a substantial fine.

30. Additionally, the transaction between the CDTC, the Kelly committee and Vinci was far from arm's-length. Vinci supplied printed campaign communications for two committees, one the candidate committee for Kim Kelly, the other the town committee chaired by Peter Kelly, Kim Kelly's husband. Mr. Pitts was Ms. Kelly's treasurer and had some nebulous role for Mr. Kelly and the town committee, where he acted as the liaison to committee vendors (and, seemingly, as the CDTC's *de facto* treasurer). When paying for joint communications between the Kelly committee and the CDTC (supplied by Vinci), Mr. Pitts allocated the percentages to be paid by each committee. These multiple roles of Mr. Pitts and the dual bill (referencing Kim Kelly's campaign and the CDTC) which was sent by Vinci, through Mr. Pitts, understandably confused Ms. Hegan, as she testified. Further, if not confusing enough, testimony revealed that at some point during the period in which the debt was owed to Vinci, Mr. Pitts became an employee at Vinci, effectively putting him on all sides of the transaction. He was gatekeeper of the CDTC's accounts, and worked for the vendor to whom the CDTC owed money. If he wanted to slow-walk the debt repayment, he was in a perfect position to do so.

31. Lastly, Vinci had no protocol or policy for collecting business debts, in part because it was a small business, in part because the principals wanted to maintain "good relationships" in politics. Vinci lost track of two of the invoices related to the CDTC, which only came to light after the instant complaint was filed. Bill collecting procedures were done via text messaging and phone or orally, all without a paper trail (except for the one email mentioned, *supra*). An uncollected debt, which is not actively pursued by the business, with little or no (or misplaced) documentation, coupled with a policy of maintaining "good relationships" with non-paying committees is a situation that is virtually indistinguishable from a business making impermissible in-kind contributions to a committee. It is not difficult to understand why this complaint was filed.

32. It is of concern to the Commission that without a bright legal line that sets forth a definite time period for vendors to collect debts from committees, the opportunity for open-ended

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<sup>2</sup> General Statutes § 9-606 provides, in relevant part, as follows: "Duties and qualifications of treasurers. Appointment and duties of solicitors. (a) The treasurer of each committee shall be responsible for (1) depositing, receiving and reporting all contributions and other funds in the manner specified in section 9-608, (2) making and reporting expenditures, (3) reporting expenses incurred but not yet paid, (4) filing the statements required under section 9-608, and (5) keeping internal records of each entry made on such statements. The treasurer of each committee shall deposit contributions in the committee's designated depository not later than twenty days after receiving them. . . ."

“advances” of goods or services might create an attractive avenue for businesses to make impermissible business contributions in all but name. The definition of contribution includes “advances” but it also includes “anything of value”—it is the Commission’s legal duty to determine how that phrase is applied. When goods or services are purchased by a committee, it is expected that such committee pay fair market value and that the transaction be treated as arm’s-length. In other words, a committee must be treated as is any other customer of the business. Special treatment, whether it is a discount unique to the committee or a catered billing practice, is something of value and may be considered a contribution.

33. To clarify the rules set forth in previous precedent (see *Carver and Lepper, supra*), if a debt is repaid within 45 days, it will be considered to be repaid in a reasonable amount of time. If it takes longer than that for a committee to repay a vendor and for a vendor to collect from a committee, the following facts and circumstances will be taken into consideration: 1) the ability of the debtor committee to pay such debts; 2) the diligence of the vendor’s efforts to collect the debt; 3) the value of the debt; 4) the time elapsed; 5) the past practices of committee and vendor alike; 6) the timely reporting of the debt; 7) the timely invoicing of the goods or services; and 8) any other relevant facts or circumstances having to do with the business or the committee. When a committee has no ability to pay a debt, it would be unreasonable to hold a vendor liable for failure to be repaid. However, when a committee selectively pays other vendors for subsequently rendered goods or services, then that may be evidence of a tacit understanding between the committee and the vendor of an “advance” or “floating” of such goods or services. A vendor that does business with a committee must make reasonable efforts to collect all outstanding debts. Failure to make such efforts shall be considered evidence that the value of such debt is, in fact, an in-kind contribution. The Commission would expect that such vendors would make frequent and formal efforts for larger debts that have been outstanding for a longer period of time from those committees that have the ability to pay some portion or all of the outstanding amount. Finally, when attempting to collect a debt, that effort should always be directed to the treasurer of the committee. Failure to direct that effort to the treasurer is evidence that the debt is not being pursued diligently.

34. In this matter, it is the Commission’s conclusion that the preponderance of the evidence did not support the State’s claim that the Respondents were in violation of General Statutes § 9-613 and § 9-622, as alleged.

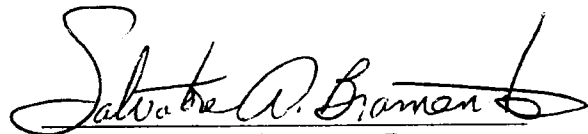
35. In consideration of the factors listed above, the complaint is dismissed.



**ORDER**

The Commission issues the following Order on the basis of the above findings:

The complaint is dismissed.

A handwritten signature in cursive script, reading "Salvatore A. Bramante". The signature is written in black ink and is positioned above the printed name and title.

Commissioner Salvatore A. Bramante  
Vice-Chair of Commission