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ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Joseph W. Jaskiewicz,
Montville

File No. 2018-010B

AGREEMENT CONTAINING CONSENT ORDER

This Agreement by and between John D'Amato, of the Town of Stonington, County of New London, State of Connecticut, hereinafter referred to as "Respondent," and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. **Complainant alleged that Joseph Rogulski, Montville Republican Town Committee ("MRTC") treasurer, failed to report the costs for the use of the store front retail space for the MRTC headquarters on its January 10th 2018 financial statement.**
2. **The MRTC prior to the November 7, 2018 municipal election used space at 1031 Route 32 as its campaign headquarter (hereinafter "Headquarters").**
3. **A failure to report expenditures for the use of facilities as MRTC headquarters by its treasurer would be a violation of General Statutes § 9-608. The provision of the use of the facilities by a business entity to the MRTC without payment would be an in-kind contribution subject to source and limit restrictions pursuant to Title 9, Chapter 155 of the General Statutes.**
4. **This agreement and order is limited to Respondent. Any additional potential settlement with other individual Respondents pertaining to this matter are treated under separate dispositions. Respondent has no prior history with the Commission.**
5. General Statutes § 9-612, provides in pertinent part:
 - (a) ***No individual shall make a contribution or contributions in any one calendar year in excess of ten thousand dollars to the state central committee of any party, or for the benefit of such committee pursuant to its authorization or request; or two thousand dollars to a town committee of any political party, or for the benefit of such committee pursuant to its authorization or request; or two thousand dollars to a legislative caucus committee or legislative leadership committee, or one thousand dollars to any other political committee other than (1) a political committee formed solely to aid or promote the success or defeat of a referendum question, (2) an exploratory committee, (3) a political committee established by an***

organization, or for the benefit of such committee pursuant to its authorization or request, or (4) a political committee formed by a slate of candidates in a primary for the office of justice of the peace of the same town. [Emphasis added.]

6. Pursuant to General Statutes § 9-622 (10), committing the following practice is prohibited:
Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter. [Emphasis added.]
7. The Commission in *Complaint by Peter J. Tracey, Vernon*, File No. 2003-150, has had an opportunity to consider and accept regular business practices as pertain the discounted use of commercial real estate that remains unoccupied. More specifically, the Commission determined:

VRTC Occupied space owned by Respondent at "Shops at 30." The commercial plaza has approximately thirty units, and a full unit was used at no charge between approximately mid-September through mid-November in the years 1999 and 2000, and partial use of that single unit at no charge between approximately mid-September through mid-November in 2001 and 2002.

This calculation is based on the discounted industry rate of \$2.00 per square foot that is used for properties that are otherwise vacant, and where tenant agrees to quit the premise upon notice by the landlord that a commercial tenant for the property has been acquired. In addition, the tenants agreed to take the property "as is," with no improvements or betterment required to be done by the landlord.

There was no formal agreement between Respondent and VRTC, but it was understood that the VRTC would, if necessary, be ready to vacate the property upon notice should a commercial tenant be found for the otherwise unoccupied space. Occupancy included the payment of utilities except for telephone expenses.

8. Upon investigation, **the office space used as MRTC Headquarters was owned by Respondent who registered the sole proprietorship with the Office of the Secretary of the State as "1031 Route 32, LLC."**

9. Additionally, it was determined that the MRTC used the Headquarters, based on an oral agreement with Respondent, for approximately two months prior to the November 7, 2017 election in Montville. The MRTC paid for the utilities during that period, which were reported on its campaign finance statements.
10. MRTC members agreed to clean up the property and remove the trash left by the former tenant. The MRTC vacated the property used as headquarters approximately one week after the election.
11. The Commission finds that Respondent donated this office space for use by the MRTC. The monthly rental for the Headquarters, which was a retail store front in a commercial plaza, was worth about \$1,700.00. The Commission finds no evidence that the Respondent understood or knew that allowing the use at no charge to a party committee was considered a contribution at the time permission was offered and given.
12. The Commission finds therefore that the approximate value to the MRTC for using the property as headquarters for about two months during the election was about \$ 3,400.00. The Commission concludes that the donation of the use of his property by Respondent to the MRTC, as detailed herein, resulted in an in-kind contribution from Respondent to the MRTC in the amount of its value of \$ 3,400.00 pursuant to General Statutes § 9-601A (a) (1).
13. Pursuant to § 9-612 (a) an individual can give a maximum of \$ 2,000.00 to a town committee. Respondent therefore made an excessive in-kind contribution, as an individual, by providing the Headquarters, with a rental value of approximately \$3,400.00 to the MRTC at no charge, and thereby exceeding the individual contribution limit to a town committee by \$1,400.00.
14. The Commission concludes that Respondent's contribution of the Headquarters to the MRTC, with a value of \$3,400.00, exceeded permissible individual contribution limits by \$1,400.00 in violation of General Statutes § 9-612 and § 9-622 (10).
15. The Commission in assessing a civil penalty is generally guided by In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:
 - (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. **The Commission does consider the fact that the MRTC used one of four rooms within the office for that period; one half of the available store front; and regular business practices of discounting retail properties for such short term use, as reasonable and consistent with prior cases. Such a discounted value for short-term use of otherwise unoccupied commercial real estate has been recognized by this Commission previously as an acceptable business practice. See *Complaint by Peter J. Tracey, Vernon*, File No. 2003-150.**
17. **The Commission notes the Respondent's claim that if the businesses practices of discounting property values for unoccupied commercial space was exclusively applied he reasonably believes that no excessive contribution to a party committee would have occurred.**
18. **Therefore the Commission believes Respondent's agreement to henceforth comply with General Statutes § 9-612 and § 9-622, will adequately serve deter future conduct of Respondent and is as an appropriate settlement of this matter.**
19. **Respondent admits all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.**
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. **Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her concerning this matter.**
22. **It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if one becomes necessary.**

ORDER

IT IS HEREBY ORDERED Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-612 and § 9-622.

The Respondent

By: 

John D'Amato
46 Taugwonk Spur, Unit 8
Stonington, Connecticut

Dated: 1-30-19

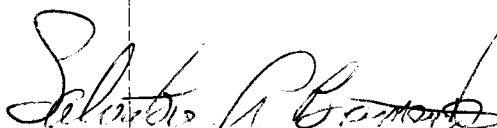
For the State of Connecticut

By: 

Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Representative of the
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 1/30/19

Adopted this 20th day of February, 2019 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission
Salvatore Bramante - Vice Chair