

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Stephen P. Funk, Litchfield

File No. 2018-012

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Stephen P. Funk of Litchfield (hereinafter the "Respondent") 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 Complaint in this matter was self-reported by the Respondent.
2. The Respondent is a manager of 1669 Thomaston Avenue LLC (the "Company") and has discretionary authority over its contracts.
3. In August of 2015, the Company purchased property, including an office building, located at 1669 Thomaston Ave. Waterbury, CT (the "Property"). At the time of the purchase, the Connecticut Department of Mental Health and Addiction Services had a long term lease for possession of a portion of the Property (the "Lease"). The value of the Lease was approximately \$71,184 per year. The Lease represents less than 10% of the income for the properties managed and/or owned by the Respondent.
4. On February 28, 2018, the Respondent was in the process of finalizing an extension of the Lease. In the course of closing, the Respondent was presented with a "gift and campaign contribution certification form" to complete. Respondent claims that it was then that he realized that he may have made an improper contribution. The Respondent then came to the offices of the Commission, sought advice, and self-reported the instant complaint that same day.
5. On September 27, 2017 Respondent made a \$100 contribution to Tim for Connecticut 2018 (the "Contribution"). At the time, Tim for Connecticut 2018 was a Connecticut Political Committee formed to support Tim Herbst's exploration of a run for statewide office.
6. The Complaint generally alleges that the Respondent, a principal of a state contractor, made impermissible contribution to an exploratory committee.
7. Under Connecticut law, a principal of a state contractor is, and was at all times relevant hereto, prohibited from making contributions to Connecticut exploratory and candidate committees formed to fund candidates for executive branch statewide office.
8. Specifically, General Statutes § 9-612 provides in pertinent part:

(F) "Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

...

(2)(A) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

...

(C) If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines that mitigating circumstances exist concerning such violation. No violation of the prohibitions contained in subparagraph (A) or (B) of this subdivision shall be deemed to have occurred if, and only if, the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made, ...

[Emphasis added.] (F) "*Principal of a state contractor* or prospective state any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member

of the board of directors of a nonprofit organization, (ii) *an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president,*

....

(2)(A) No state contractor, prospective state contractor, principal of a state contractor or *principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder*, or principal of a holder of a valid prequalification certificate, *shall make a contribution to*, or solicit contributions on behalf of (i) *an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer,* (ii) *a political committee authorized to make contributions or expenditures to or for the benefit of such candidates*, or (iii) a party committee;

....

(C) *If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines that mitigating circumstances exist concerning such violation.*

(Emphasis added.)

9. The Respondent admits that he had authority over state contracts and thus is a principal of the Company, which is, in turn, is a state contractor.
10. When the Respondent made the \$100 contribution to Tim for Connecticut 2018 on September 27, 2017, he indicated on the contributor certification form that he was not a principal of a state contractor.
11. When he discovered that he was, in fact a principal of a state contractor, he notified the Tim for Connecticut 2018 committee, which issued a refund check to him.
12. The Respondent claims that he did not think about the Lease when he checked that box on the form. He further noted that he did not originate the Lease, but purchased the building with a state agency already as a tenant.
13. The Commission concludes that, at all times relevant hereto, 1669 Thomaston Avenue LLC

was a “state contractor” as defined by General Statutes § 9-612.

14. The Commission further concludes that, at all times relevant hereto, the Respondent was a “principal of a state contractor” as defined by General Statutes § 9-612.
15. The Commission further concludes that, on September 27, 2017, the Respondent made an impermissible contribution to an exploratory committee formed to support a candidate for executive branch statewide office, in violation of General Statutes § 9-612.
16. Pursuant to General Statutes § 9-612 (f) (2) (C),

If a state contractor or principal of a state contractor makes or solicits a contribution as prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after February 8, 2007, void the existing contract with such contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines that mitigating circumstances exist concerning such violation. No violation of the prohibitions contained in subparagraph (A) or (B) of this subdivision shall be deemed to have occurred if, and only if, the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made;

17. The Commission has held that, that pursuant to General Statutes § 9-612 (f), a separate “mitigating circumstances” analysis is not reached unless the Commission determines that a violation has occurred. Therefore, the Commission finds that the violations by Respondent of the state contractor contribution ban, as detailed herein, allows the Commission to determine whether *mitigating circumstances* exist concerning such violations pursuant to General Statutes § 9-612 (f) (2) (C). *In the Matter of a Complaint by Attorney Brendon M. Fox on Behalf of Joseph Dasilva, Danbury*, File No. 2015-179.
18. General Statutes § 9-612 (f) (2) (C) provides possible relief from the mandatory voiding of the existing state contract and prohibition from the state contractor entering into future state contracts for one year after the election for which such contribution is made or solicited, if the Commission finds mitigating circumstances exist concerning the violation. If mitigating circumstances are found by the Commission, the contractual penalty is not automatic, but the awarding agency retains discretion to amend a contract or award a new contract. The agency may still void a contract at its discretion if a violation of § 9-612 (f) (2) (C) occurs, even if mitigating circumstances are found pursuant to that section. *See, In the Matter of a Complaint by Attorney Brendon M. Fox on Behalf of Joseph Dasilva, Danbury*, File No. 2015-179.

19. In determining whether circumstances are “mitigating,” the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondent, as well as any contracts, agreements or pending bids or responses to RFPs between the Company and the State that would, although not excusing the conduct, tend to reduce or militate against the harm of pay-to-play and/or influence peddling the state contractor contribution ban is designed to prevent.
20. Specifically, the Commission has consistently and historically determined that pursuant to General Statutes §9-612 (f) the state contractor ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees for statewide office and/or party committees could wield over those state actors awarding such contracts and to prevent the awarding of contracts in exchange for campaign contributions and various pay-to-play campaign finance schemes. *See In the Matter of a Complaint by Carla Squatrito, et al.*, File No. 2010-112; *In the Matter of a Complaint by Gerald T. Weiner, et al.*, File No. 2010-099; *In Re David Baxter, et al.*, File No. 2009-080; *In Re Charles Shivery*, File No. 2007-381; *In the Matter of Ronald Nault and Luchs Consulting Engineers, LLC*, File No. 2007-353; *In Re JCJ Architecture*, File 2008-120; *In Re Antinozzi Associates*, File No. 2014-009, *In the Matter of a Complaint by Curtis Robinson, Plainville*, File No. 2014-169; and, *In the Matter of a Complaint by Raymond Baldwin, Trumbull*, File No. 2015-009.
21. The Commission finds, after investigation, that there is a lack of evidence that the recipients of prohibited contributions by Respondent had any nexus with the awarding of contracts or contract amendments or the acceptance bid proposals by the Company.
22. Additionally, and upon investigation, the Commission finds a lack of evidence that the contributions described in this agreement were made in connection with any requests for or offers of assistance between the Tim for Connecticut 2018 and/or its agents and representatives and the Respondent pertaining to any contract or proposal to which the Company was a party.
23. Pertaining to Respondent and his prohibited contributions detailed herein, the Commission determines that the following *mitigating circumstances* exist:
 - (1) There was no discussion or agreement by or among Respondent, the representatives of recipient committee, and the State that Respondent might receive some favored treatment in exchange for the contributions that Respondent made after he became a state contractor or prospective state contractor.
 - (2) There was no discussion, agreement, or understanding that any of the parties or their agents would provide assistance to Respondent in his

efforts to compete for awards of State contracts in exchange for contributions to the recipient committees.

(3) The Respondent self-reported this complaint after becoming aware of the potential violation.

24. The Commission determines after investigation that the policy behind General Statutes § 9-612 (f) to address “pay-to-play” and/or influence peddling schemes relating to campaign contributions and the awarding of state contracts was not circumvented under these narrow facts and circumstances and therefore allowing the Company to continue its contractual relationships, obligations or bid proposals with the State of Connecticut does not compromise the state’s interests to insure integrity in its campaign financing system.
25. Accordingly, the Commission concludes pursuant to General Statutes § 9-612 (f) (2) (C) that mitigating circumstances existed pertaining to the violations found in connection with the contributions to Tim for Connecticut 2018 such that the Company is not statutorily barred from continuing, effectuating or otherwise implementing existing contracts, contractual obligations or being awarded contracts with State of Connecticut.
26. 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
27. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used by either party as an admission in any subsequent hearing, if the same becomes necessary.
28. 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.

29. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter, and this agreement and order does not serve as a prospective ban on future contracts between Respondent and state agencies.

ORDER

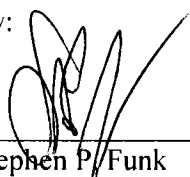
IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-612.

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in the amount of two hundred fifty dollars (\$250 .00).

The Respondent:

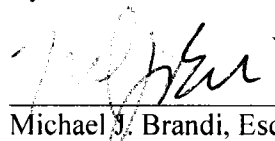
For the State of Connecticut:

By:



Stephen P. Funk
196 Fern Ave.
Litchfield, CT 06759

By:

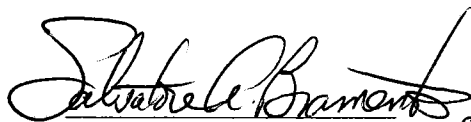


Michael J. Brandi, Esq.,
Executive Director and General
Authorized Representative of the State
Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, CT 06103

Dated: _____

Dated: 5/4/18

Adopted this 16th day of MAY, 2018 at Hartford, Connecticut



~~Anthony J. Castagno, Chairman~~ Salvatore
By Order of the Commission Bramante

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MAY 04 2018

ENFORCEMENT COMMISSION