

MAR 11 2019

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Harry A. Perkins, Woodbridge

File No. 2018-117

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Harry A. Perkins, (hereinafter "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. On December 11, 2018, counsel for Connecticut Innovations, Inc. ("CI"), a quasi-public agency, contacted the Commission with a question concerning an upcoming loan agreement and whether the state contractor provisions of General Statutes § 9-612 (f) would be implicated. Specifically, counsel for CI wanted to know if CI was precluded from entering into a conduit financing agreement with a private bank for the benefit of Connecticut Container Corp. ("CCC") because one of CCC's principals may have violated the state contractor contribution limitations by making three contributions of \$250 to committees subject to such limitation.
2. Based upon those initial conversations, Respondent Perkins filed a self-reported complaint concerning his conduct.

Factual Background

3. At all times relevant hereto CI was and is a quasi-public agency as defined by General Statutes § 9-612 (f).
4. At all times relevant hereto, CCC was a domestic corporation in the State of Connecticut.
5. As part of CI's mission, it orchestrates "conduit financing" through private banks to businesses in the state of Connecticut so that such businesses can take advantage of certain federal tax benefits.
6. The standard procedure by which CI provides conduit financing is as follows.
 - a. An applicant business applies to CI to obtain conduit financing.
 - b. CI then chooses the applicant business that will receive the conduit financing and advises a private bank of such approval.
 - c. The private bank, through its internal business units, sets the terms of a loan that it will ultimately issue to the applicant business.
 - d. CI then issues a bond for which the private bank is the sole bond holder.

- e. CI then assigns the proceeds, rights, and obligations of the bond to the private bank.
 - f. The private bank then loans the money obtained from the bond to the applicant business on the terms previously set by the private bank.
 - g. After assigning the bond note to the private bank, neither the applicant business, nor the private bank, have any legal recourse against CI.
7. At all times relevant hereto Harry A. Perkins was and is a principal of CCC.
 8. On December 6, 2011, CCC entered into a conduit bond with the Connecticut Development Authority (“CDA”), a quasi-public agency in the executive branch of the State of Connecticut. The structure of the conduit bond was substantially identical to that detailed in paragraphs 6a through 6g, and the CDA immediately assigned such bond to People’s Capital and Leasing Corp. (“People’s Capital”).
 9. On December 16, 2014, CCC entered into a conduit bond with CI. The structure of the conduit bond was substantially identical to that detailed in paragraphs 6a through 6g, and the CDA immediately assigned such bond to People’s Capital.
 10. On September 4, 2018, CCC submitted an application for new conduit financing through CI. The amount of the September 4, 2018 application was seven million dollars (\$7,000,000.00).
 11. CCC’s September 4, 2018 application has been approved, and the loan closed on or before December 31, 2018.
 12. On or about June 29, 2017, Harry A. Perkins made a \$250 contribution to the Obsitnik for Governor Exploratory Committee, an exploratory committee established to finance Stephen Obsitnik’s exploration of candidacy for statewide office in 2018.
 13. On or about July 31, 2017, Harry A. Perkins made a \$250 contribution to the North Haven Republican Town Committee.
 14. On or about July 24, 2018, Harry A. Perkins made a \$250 contribution to the North Haven Republican Town Committee.
 15. None of the aforementioned contributions were returned within the safe harbor period detailed in General Statutes § 9-612 (f) (2) (C).
 16. In addition to his position with CCC, Harry A. Perkins is, and was at all times relevant hereto, a principal of Nutmeg Container Corp. (“NCC”).

17. At all times relevant hereto, NCC is and was a state contractor and was so listed on the State Elections Enforcement Commission's list of state contractors prohibited from contributing to statewide candidates.

Liability

18. Executive branch state contractors are prohibited from making contributions to the campaign committees and/or exploratory committees financing Connecticut candidates for executive branch office. General Statutes § 9-612 (f). Executive branch state contractors are further prohibited from making contributions to party committees. *Id.*
19. Based on the facts detailed above, there are three issues that the Commission must consider in assessing whether Respondent Perkins violated General Statutes § 9-612 (f). First, the Commission must determine whether the conduit financing agreements between CCC and CI were state contracts. Second, the Commission must determine if CCC was a state contractor at the time Respondent Perkins made the contributions at issue. Third, Commission must determine if the contributions at issue were prohibited due to Respondent's relationship with NCC.

The conduit financing agreements between CCC and CI were state contracts.

20. The structure of the conduit bonds raise a question as to whether a state contract exists, and, if it does, for what period of time.

21. "State Contract" is defined in as:

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

General Statutes § 9-612 (f) (1) (C).

22. CI's participation in each of the conduit bonds independently generated or will generate a benefit of more than \$50,000 to CCC. This is also a lending of money that cannot fairly be considered anything other than a loan and/or loan guarantee. Therefore, while the agreements were not let through the normal procurement process, the arrangements do fall within the

definition of state contracts in General Statutes § 9-612 (f) and thus CCC was a state contractor as a result of entering into such agreements.

CCC was not a state contractor or prospective state contractor at the time Respondent Perkins made the contributions at issue.

23. The definition of state contractor holds that an entity is only considered a state contractor “until December thirty-first of the year in which such contract terminates.” General Statutes § 9-612 (f) (1) (D). In this case, CI’s (and thus the State’s) role in the transaction is completely resolved on the same day the contract is issued. Therefore, the state contract for each conduit financing agreement effectively terminates the same day it is issued and, thus, on December thirty-first of each year CCC entered into a conduit financing agreement, their state contractor status ended.

24. Moreover, General Statutes § 9-612 (f) (1) (E) defines prospective state contractor to mean:

a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. “Prospective state contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

25. At the time Respondent Perkins made the July 24, 2018 contribution to the North Haven Republican Town Committee, CCC had not yet submitted its application for conduit financing. Therefore, even if such application could be considered sufficient to qualify an applicant as a prospective state contractor, CCC would not have been considered a prospective state contractor at the time such contribution was made.

26. Accordingly, when Respondent Perkins made the contributions detailed herein, he was not a principal of a state contractor or prospective state contractor by nature of his relationship with CCC and the contributions were not prohibited by the nature of that relationship.

Respondent Perkins’s contributions were prohibited under General Statutes § 9-612 (f) due to NCC’s state contractor status.

27. While the interactions between CCC and CI did not result in any violations by Respondent Perkins, Respondent Perkins was also a principal of another company known as NCC. Mr. Perkins admits that NCC may have been a state contractor as a result of certain employment training grants NCC receives pursuant to the Manufacturing Innovation Fund – Incumbent Worker Training Program. In fact, NCC received a total of \$73,150 in reimbursed training

expensed between July 2017 and April 2018. Of that sum, \$18,525 were reimbursed in 2017 and \$54,625 were reimbursed in 2018.

28. As the value of the contract in 2017 did not, and may not have ever met the \$50,000 threshold, NCC was not a state contractor in 2017. However, as the value of the state contract did exceed \$50,000 in 2018, NCC was a state contractor between April of 2018 and December 31, 2018. Accordingly, the \$250 contribution Respondent Perkins made to the North Haven Republican Town Committee on July 24, 2018 was a prohibited contribution pursuant to General Statutes § 9-612 (f).
29. The Commission concludes that Respondent Perkins violated General Statutes § 9-61 (f) by making a \$250 contribution to the North Haven Republican Town Committee on July 24, 2018 when he was principal of the state contractor Nutmeg Container Corporation.

Penalty

Civil Penalties

30. The Commission has a long history of assessing civil penalties for violations of General Statutes § 9-612 (f). For example, the Commission assessed penalties in the self-reported matter *In the Matter of a Complaint by Antinozzi Associates, Bridgeport*, File No. 2014-009, where penalties ranged in the amount of \$1,000.00 to \$2,000.00 for multiple prohibited contributions by state contractors and their spouses. See also, *In the Matter of a Complaint by Bradford Dimeo, New Haven*, File No. 2017-026 (\$2,000 civil penalty for contributions to two prohibited committees); *In the Matter of a Complaint by Michael A. Neal, Naples, FL*, File No. 2018-028 (\$1,500 civil penalty for a \$3,500 contribution to a gubernatorial candidate committee). However, when a Respondent has made a single, small impermissible contribution, when the violation appears to have been a mistake, and when the Respondent self-reports the complaint, the Commission has assessed smaller civil penalties. See e.g., *In the Matter of a Complaint by Morna Murray, Glastonbury*, 2014-078 (\$200 civil penalty for a single \$100 contribution to a statewide candidate committee that was self-reported.).
31. In this case, based upon the number and size of the contributions, the Commission concludes that a civil penalty of \$200 is appropriate.

Mitigating Circumstances

32. Pursuant to General Statutes § 9-612 (f), if the Commission determines that a state contractor or principal of a state contractor has made an impermissible contribution in violation of the state contractor ban, no agency of the State of Connecticut may award such state contractor or prospective state contractor a state contract, extension of a state contract, or amendment of a state contract, unless the Commission finds that mitigating circumstances exists. Specifically General Statutes § 9-612 (f) (2) (C) provides:

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;

(emphasis added).

33. 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 Respondents 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.
34. 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.
35. In determining whether circumstances are “mitigating,” the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondents, as well as how any contracts, agreements or pending bids or responses to between the Companies and the State 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.
36. 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 Michael A. Neal, Naples, FL*, File No. 2018-028; *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 a Complaint by 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.

37. In this case the Commission finds the following “mitigating circumstances” exist:
- a. There was no discussion or agreement by or between Respondent Perkins and the representatives of recipient committees or the State that NCC might receive favored treatment in exchange for the contribution that Respondents made.
 - b. There was no discussion, agreement, or understanding that any of the parties or their agents would provide assistance to Respondent Perkins in NCC’s efforts to compete for awards of State contracts in exchange for contribution to the recipient committees.
 - c. Respondent self-reported this complaint when he was made aware of the potential violation.

Terms of General Application

38. 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.
39. 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 Respondent and may not be used by either party as an admission in any subsequent hearing, if the same becomes necessary.
40. 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.
41. 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.

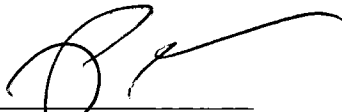
ORDER

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

IT IS HEREBY FURTHER ORDERED THAT Respondent Harry Perkins shall pay a civil penalty in the amount of two hundred dollars (\$200.00).

Respondent
Harry Perkins:

By:



Harry Perkins
c/o Michael Grundei
Wiggin and Dana LLP
Two Stamford Plaza
281 Tresser Boulevard
Stamford, CT 06901-3284

For the State of Connecticut:

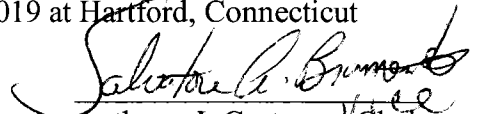
By:



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: 3/11/19

Adopted this 20 day of March, 2019 at Hartford, Connecticut


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