

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Robert D. Fatovic,
(Self-Report), Miami, FL.

File No. 2019-099

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Elaine Nord of the Town of Westport, County of Fairfield, State of Connecticut (hereinafter "Respondent") and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with § 9-7b-54 of the Regulations of Connecticut State Agencies and § 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Robert D. Fatovic, is the Executive Vice President, Chief Legal Officer and Corporate Secretary of Ryder System, Inc. (hereinafter "Company"). Mr. Fatovic filed this complaint pertaining to a potential violation of Connecticut General Statutes § 9-612, on behalf of Respondent. Respondent reports that she made a contribution to a political committee as the spouse of the principal of a state contractor.¹

2. More specifically, Mr. Fatovic, on behalf of Respondent, indicated that:
On May 15, 2018, the Connecticut Department of Transportation ("CDOT") made a written offer to one of our subsidiary companies, Ryder Truck Rental, Inc., to purchase a small parcel of property adjacent to our existing service facility in Hartford from the CDOT. On May 23, 2018, we reached an agreement on the purchase price for the property and were subsequently notified by CDOT that a Gift and Campaign Contribution Certification ("Certification") was required to be submitted. ... Our local counsel on this transaction subsequently informed us that ... the campaign finance statutes may apply to the parent company, requiring us to make further inquiries into these matters.

¹ *Complaint by Robert D. Fatovic, Miami, Fla., File No. 2019-099 (the complaint was made on behalf of Respondent and her spouse David Nord who are residents of Westport, Connecticut).*

In an abundance of caution, and acknowledging that the statute may require disclosure, we are writing to inform you that the spouse of one of the members of our Board of Directors, Ms. Elaine Nord, made a \$100 contribution to David Stemerman for Governor, Inc. on July 31, 2018 without any knowledge that Ryder Truck Rental, Inc. had finalized the terms for the purchase of the property several months prior on May 23, 2018. At the time of the contribution, the price and terms of the sale were already agreed to by the parties and the only remaining item prior to closing was the receipt of administrative approvals that, as of this date, have not yet been received. ...

3. By way of background, The Company agreed upon the purchase of a parcel of land in Hartford from the Department of Transportation (“DOT”) on May 23, 2018. The Company is a “state contractor” pursuant to General Statutes § 9-612.
4. At all times relevant to this complaint, Respondent was the spouse of a member of the Company’s Board of Director’s and is therefore a “principal of a state contractor” for purposes of General Statutes § 9-612.
5. General Statutes § 9-612, provides in pertinent part:
 - (f) (1) (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, ... (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 or 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, ..., knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor 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 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, ... 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*. ...;

[Emphasis added.]

6. Mr. Fatovic asserts that On May 23, 2018, the Company reached an agreement on the purchase price for the property and were subsequently notified by DOT that a *Gift and Campaign Contribution Certification* ("Certification") was required to be submitted.

7. Further, Mr. Fatovic asserts that the Company was made aware of this by their in-state Connecticut counsel after its original submission of required documents for the purchase of the parcel in Hartford to the DOT. These assertions were corroborated by documents provided with this complaint.²
8. After investigation, it was confirmed that Respondent, as the spouse of a principal of a state contractor, on July 31, 2018 made a prohibited contribution in the amount of \$100.00 to the gubernatorial candidate committee of David Stemerma in violation of General Statutes § 9-612.³
9. The Commission concludes that Respondent, as the spouse of the principal of a state contractor, and pursuant to General Statutes § 9-612, made a single prohibited contribution in the amount of \$100.00 to a gubernatorial candidate committee, which was therefore prohibited by that section.
10. The Commission finds that pursuant to General Statutes § 9-612 (f), a mitigating circumstances analysis is not reached unless the Commission determines that a violation has occurred. It follows that the violation by Respondent of the state contractor contribution prohibition, as detailed herein, allows the Commission to determine whether mitigating circumstances exist concerning such violations pursuant to General Statutes § 9-612 (f) (2) (C).
11. General Statutes § 9-612(f) (2) (C) provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether 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

² See Correspondence from Pullman & Comley to Christie A. LaBella, Property Management Section, Division of Rights of Way, DOT, dated July 10, 2019 and received by the Commission on July 31, 2019 (Company counsel Pullman & Comley explain its original omission of the Company's *Gift and Campaign Contribution Certification* and enclose it with its correspondence).

³ See "David Stemerma for Governor, Inc.," *Itemized Campaign Finance Disclosure Statement* (SEEC Form 30), Received August 2, 2018.

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.

12. In determining whether circumstances are "mitigating," the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondent and the recipient political committee and its agents, as well as the contracts and agreements between the Firm and the State and covered entities, that would, although not excusing the conduct, tend to reduce the harm General Statutes § 9-612 (f) and the state contractor contribution ban is designed to prevent.
13. The Commission has consistently determined that pursuant to General Statutes § 9-612 (f) the state contractor prohibition is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees and exploratory committees for statewide office could wield over those state actors awarding such contracts and prevent awarding of contracts in exchange for campaign contributions. *See 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; *In the Matter of a Complaint by Raymond Baldwin*, Trumbull, File No. 2015-009; and, more recently, *In the Matter of a Complaint by Michael A. Neal, Naples, FL*, File No. 2018-028.
14. The Commission determines, pertaining to the circumstances surrounding Respondent's \$100.00 contribution to "David Stemerman for Governor, Inc.," that the following mitigating circumstances exist pursuant to General Statutes § 9-612, in that:
 - (1) Respondent did not participate in the bidding or negotiation process between the Company and the State of Connecticut, which resulted in the purchase of property by the Company from the DOT;

- (2) Respondent made the contribution to David Stemerman for Governor, Inc., without any expectation that the Company would receive any benefit or advantage in its negotiations with the State of Connecticut for its purchase of property;
- (3) There was no agreement between the Respondent, the Company and/or its agents and those of David Stemerman for Governor, Inc., or the candidate that the contribution was being made to advance the Company's contractual interests with the State of Connecticut; and,
- (4) Upon being made aware of the contribution in question as a potential violation, the Company with the cooperation and agreement of Respondent undertook to self-report the matter to the Commission.

15. The Commission concludes pursuant to General Statutes § 9-612 (f) (2) (C) that mitigating circumstances existed pertaining to the violation found in connection with the contribution by Respondent to a statewide candidate committee, such that the Company is not statutorily barred from continuing its contracts and/or negotiations to effectuate or implement such contracts pertaining to the Company's purchase of a parcel of land in Hartford, or otherwise, with the DOT or other state entities covered by the state contractor contribution ban.
16. The Commission determines after investigation that the policy behind General Statutes § 9-612 (f) to address "pay-to-play" 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 and obligations with DOT and state entities does not compromise the state's interests to insure integrity in its campaign financing system.
17. Accordingly, the Commission concludes that these mitigating circumstances concerning the violation by Respondent do not bar DOT or other state entities covered by General Statutes § 9-612 (f), from negotiating contracts or continuing their existing contract obligations with the Company pertaining to the sale of a parcel of land in Hartford.

18. Further, the Commission concludes that the DOT and other state entities state agencies/actors may exercise their discretion consistent with their authority under that section as it pertains to contractual relations with the Company.
19. 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 § 9-7b-56 of the Regulations of Connecticut State Agencies.
20. 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 or against the Company in any proceeding, if the same becomes necessary.
21. 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.
22. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent or proceedings against the Respondent pertaining to this matter, and this agreement and order does not serve as a prospective ban on future contracts between the Company and state agencies.

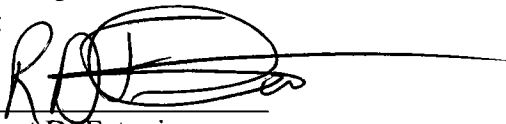
ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-612 (f); and

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

The Respondent:


BY:


Robert D. Fatovic
Executive Vice President, Chief Legal Officer
and Corporate Secretary
on behalf of Ryder System, Inc.
11690 NW 105 Street
Miami, Florida

Dated: 9/20/19

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 Street, Suite 101
Hartford, Connecticut

Dated: 9/23/19

Adopted this 2nd day of Oct, 2019 at Hartford, Connecticut


Anthony J. Castagno, Chairman

By Order of the Commission