

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Fernando Betancourt (Self-Reported), File No. 2023-001
Hartford

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Fernando Betancourt of the City of Hartford, State of Connecticut (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 January 3, 2023, the Respondent self-reported a potential violation of General Statutes § 9-612.
2. By way of background, Respondent, is the Executive Director of San Juan Center Inc. ("SJC"), and self-reported a potential violation of General Statutes § 9-612. SJC is a registered 501 (c) (3) organization that was founded in 1972 that serves the Latino population in the Greater Hartford region in developing and implementing public service programs to serve their constituency.
3. Respondent reports that he made the prohibited contribution to "Santiago for CT," prior to being made aware of the state contractor contribution ban and General Statutes § 9-612.
4. Under Connecticut law, a principal of an executive branch state contractor is, and was at all times relevant hereto, prohibited from making contributions to a candidate committee for a candidate running for statewide executive branch office in the State of Connecticut.
5. It is not disputed that SJC has state contracts with Capitol Region Development Authority ("CRDA") and the State of Connecticut executive branch and that at all relevant times it appeared on State Election Enforcement Commission's *List Two – State Contractors Prohibited from Contributing to Statewide Candidates*.¹
6. The Respondent has cooperated fully with this investigation and has no prior history with the Commission.

¹ While not exhaustive, this list includes contractors prohibited from contributing to statewide office candidates pursuant to General Statutes § 9-612 (f) (2) and is published and updated by the Commission. At all relevant times, the CCEH appeared on the list of executive branch contractors.

7. General Statutes § 9-612 provides in pertinent part:

(f)(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, on and after January 1, 2011, knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor 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 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, ...

8. General Statutes § 9-612 (f) (I) (F) further defines "principal of a state contractor" as follows:

"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.

9. Connecticut law further defines a "state contract" to be:
 - 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.
10. General Statutes § 9-612 (f) (I) (D) defines a "state contractor" to be:
 - a person, business entity or nonprofit organization that enters into a state contract.
 - Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "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.

11. The Commission concludes that the SJC is a state contractor pursuant to General Statutes § 9-612 (f) (I) (D).
12. The Commission further concludes that Respondent, as Executive Director of the SJC, at the time of the contribution, was the principal of a state contractor pursuant to General Statutes § 9-612 (f) (I) (F) (i).
13. The Commission finds that Respondent on November 12, 2021 made a contribution in the amount of \$100.00 to Santiago for CT, the campaign committee registered by Hilda Santiago for her campaign for the Office of the Secretary of State at the November 8, 2022 election.
14. General Statutes § 9-612 (f) prohibits the principal of a state contractor from making a contribution to a candidate for statewide office.
15. The Commission finds that the self-reported contribution to Santiago for CT was prohibited by General Statutes § 9-612 (f) because Respondent, as the principal of an executive branch state contractor, was barred from making a contribution to a candidate for statewide office pursuant to § 9-612 (f) (2) (a) (i).
16. The Commission therefore concludes that Respondent violated General Statutes § 9-612 (f) by making a contribution to a candidate committee for statewide office.
17. Once the Commission determines that a principal of a state contractor has made or solicited an impermissible contribution, the contracting state 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 may void the state contractor's contracts and such contractor.
18. 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 violation by Respondent of the state contractor contribution ban, as detailed herein, allows the Commission to determine whether mitigating circumstances exist concerning such violation pursuant to General Statutes § 9-612 (f) (2) (C).

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 how any contracts, agreements or pending bids between the state contractor 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.

20. Concerning what constitutes a "mitigating factor" the Commission has previously determined² that:

In determining whether mitigating circumstances exist regarding the violation, the Commission may take into consideration the following list of mitigating circumstances, which it should be noted, is not exhaustive:

- (a) The amount of the prohibited contribution or instance of solicitation;
- (b) The type of principal committing the violation;
- (c) Past history of noncompliance with election laws;
- (d) Whether the contractor or prospective state contractor exercised due diligence in notifying the principals of the statutory prohibitions;
- (e) The economic harm to the State;
- (f) The disruption of an essential State service; and
- (g) Any other circumstance that the contractor, prospective state contractor or contracting state agency may raise that, in the Commission's determination, is relevant to whether such contractual consequences should be imposed.

21. 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. 20 14-169; *In the Matter of a Complaint by Raymond Baldwin*, Trumbull, File No. 2015-009; and, most recently, *In the Matter of a Complaint by Evonne Klein (Self-Reported)*, Darien, File No. 2022-050.

² See *In the Matter of a Complaint by Evonne Klein (Self-Reported)*, Darien, File No. 2022-050.

22. Consistent with Commission precedent, the Commission determines, with regard to Respondent's single prohibited contribution, the following mitigating circumstances exist:
- (a) The Respondent self-reported this matter, upon learning of his potential violation;
 - (b) The contribution described herein was not made in connection with any request by Respondent and/or his agents that the recipient statewide candidate committee and/or its agents provide assistance in the SJC's efforts to receive contracts from CRDA and the State of Connecticut.
 - (c) There was no discussion or agreement by Respondent or SJC and/or their agents or the recipient statewide candidate committee and CRDA and the State of Connecticut suggesting or implying that Respondent or SJC might receive some favored treatment from either CRDA or the State of Connecticut pertaining to the award of state contracts or grants in exchange for the contribution to such committee.
23. 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. Therefore, allowing SJC to continue its contractual relationships and related obligations with CRDA and the State of Connecticut, does not compromise the State's interest to insure integrity in its campaign financing and state contracting systems.
24. Accordingly, the Commission concludes pursuant to General Statutes § 9-612 (f) (2) (C) that mitigating circumstances exist pertaining to the violation found in connection with the Respondent's contribution such that SJC is not statutorily barred from continuing, effectuating or otherwise implementing existing contracts, contractual obligations or being awarded contracts with CRDA and the State of Connecticut.

25. 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.
26. 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.
27. 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.
28. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any (i) further proceedings against Respondent, or (ii) SJC pertaining to this matter, and this agreement and order does not serve as a prospective ban on future contracts between SJC and state agencies.

ORDER

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

IT IS HEREBY FURTHER ORDERED THAT Respondent shall pay a civil penalty in the amount of one hundred dollars (\$100.00) to the Commission, in full and final resolution of this matter.

The Respondent:

For the State of Connecticut:

By:

By:



Fernando Betancourt
Hartford, CT



Michael J. Brandi, Esq.
Executive Director and General
Authorized Representative of the State
Elections Enforcement Commission
55 Farmington Ave., 8th Floor
Hartford, CT 06105

Dated: 1/26/23.

Dated: 1/31/23

Adopted this ___ day of _____, 2023 at Hartford, CT

Stephen T. Penny, Chairman
By order of the Commission

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